OIL POLLUTION AND COMPENSATION

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND NAVIGATION

OF THE

COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 1465—TO ESTABLISH LIMITATIONS ON LIABILITY FOR DAMAGES RESULTING FROM OIL POLLUTION, TO ESTABLISH A FUND FOR THE PAYMENT OF COMPENSATION FOR SUCH DAMAGES, AND FOR OTHER PURPOSES

May 11, 1989

SERIAL NO. 101-11

Printed for the use of the
Committee on Merchant Marine and Fisheries

U.S. GOVERNMENT PRINTING OFFICE

99-545 ==

WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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OIL POLLUTION LIABILITY AND COMPENSATION

THURSDAY, MAY 11, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:00 a.m., in Room 1334, Longworth House Office Building, Hon. Billy Tauzin, Chairman of the Subcommittee, presiding.

Members present: Representatives Tauzin, Jones (Ex Officio), Studds, Hughes, Hutto, Carper, Ortiz, Pickett, Brennan, Clement, Laughlin, Lowey, Unsoeld, Davis, Young, Shumway, Saxton, Miller, Bentley, Coble, Bunning, Inhofe, and Goss.

Staff present: Roy Willis, Cornel Martin, Sue Stilley, Marsha Canter, Bill Wright, Ed Welch, Barbara Cavas, Kurt Oxley, Duncan Smith, George Pence, Rebecca Dye, Sherry Steele, Sue Waldron, Cyndy Wilkinson, Greg Lambert, and Gwen Lockhart.

OPENING STATEMENT OF HON. BILLY TAUZIN, A U.S. REPRESENTATIVE FROM LOUISIANA, AND CHAIRMAN, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

Mr. TAUZIN. The Subcommittee will please come to order. The Subcommittee on the Coast Guard and Navigation convenes today to consider legislation to consolidate and reform the four national laws which govern oil spill liability and compensation.

In early April, when we examined the causes and the consequences of the *Exxon Valdez* oil spill in Alaska's Prince William Sound, it became very clear just how badly Federal laws need to be changed. We were not prepared to respond in Alaska. We were not prepared to respond to large oil spills anywhere in our Nation.

In Alaska, the response initially was slow, inadequate, disorganized, lacking clear lines of authority. Precious time was lost. The situation, in fact, has improved only marginally. Less than one-percent of the beach clean-up has been completed; critiques, second-guessing have begun. And that is not what we are here to do.

Hindsight can be 20/20, and very helpful. But today, we have to concentrate on the future; and prepare for the next oil spill. We cannot eliminate the risks of oil spills. Every day, the United States grows more and more dependent on foreign energy that comes to our shores in tankers.

Our national distribution system for oil and petroleum products is equally dependent upon water-borne transportation. The risks of

spills will be with us always; and we can and must act to mitigate the threat to our coastline and the waterways of our Nation through a well-organized and well-funded system for prevention and for response.

We must also ensure that those who are damaged by oil spills receive prompt and just compensation. We must make sure that sufficient funds will be available to restore our environment.

The well-seasoned Congressional observer is probably saying to himself or herself, "Now, have not we heard that before?"

Sadly, the answer is yes. This is not the first time Congress has attempted to consolidate the four laws which govern oil spill liability and compensation. In fact, every Congress since 1976 has either passed such legislation in the Senate or the House both, only to see it die in conference committees or meet some other less-distinguished fate.

I am proud to say that this Subcommittee and the Merchant Marine and Fisheries Committee has always taken the lead in these reform efforts. The principal House bill, H.R. 1465, was introduced by our Full-Committee Chairman, the Honorable Walter Jones of North Carolina.

His bill reflects the consensus that has been building in the House for nearly a decade now. There are other oil spill liability and compensation proposals in this Congress. I understand our lead witness today, Transportation Secretary Skinner, will unveil the Bush Administration legislative proposal. We are eager to receive that proposal.

Other proposals include the Senate Majority Leader, George Mitchell's Senate Bill 686, and Representative Young's House Bill 2158, a bill, by the way, dealing specifically with Prince William Sound. Two remarkably similar bills have also been introduced in the Senate.

There are, I am sure, meritorious provisions in each of these bills; although there are also significant differences between each of them.

Our hearings today mark the beginning of the first formal legislative effort in this Congress to enact needed reforms. In the weeks ahead, we will work to sort through the various proposals, with the goal in mind of building a workable system, one worthy of public confidence that enables the Nation to respond to oil spills in the marine environment, and to properly compensate persons damaged, and to restore the coastal environment, fisheries resources and wildlife.

We will not drag our feet. The Subcommittee expects to go into a mark-up session on oil spill liability and compensation legislation on the 24th of this month.

One final note before we begin. Immediately following today's hearing, we will reconvene this afternoon for a separate hearing on an emergency proposal that deals exclusively with the Arctic waters in Prince William Sound, offered by the gentleman from Alaska, our friend Don Young.

I am now privileged to recognize the Ranking Minority Leader, the gentleman from Michigan, my friend Bob Davis.

Bob?

OPENING STATEMENT OF HON. ROBERT W. DAVIS, A U.S. REPRESENTATIVE FROM MICHIGAN

Mr. DAVIS. Thank you very much, Mr. Chairman. Secretary Skinner, Admiral Yost and Mr. Hoyle, we welcome you here today. Hopefully, we are going to be able to work together to resolve this problem that has plagued us for so long.

Mr. Chairman, the oil spill disaster in Prince William Sound, Alaska, has highlighted the need for a comprehensive Federal oil spill compensation system. Members of this Committee, as you have indicated, have obviously been aware of this need for many, many years.

I have supported comprehensive oil spill legislation, because a large oil spill in the Great Lakes would virtually destroy the fragile environment and the lives of the people who live there.

The bill we have before us today represents the work of many groups, including government officials, environmentalists, vessel operators, oil companies and the states.

H.R. 1465 reflects the necessary compromises made to accommodate the various parties interested in this legislation. In that respect, it strikes a balance between those with differing viewpoints on the major issues.

The tragic *Exxon Valdez* oil spill has sparked renewed interest in this bill; but the circumstances surrounding this incident should not cause us to change the course that was plotted for sound policy reasons. This Committee has been considering the issues surrounding oil spill legislation since 1975. We have proceeded in a deliberate fashion and produced a good bill.

Unfortunately, the past history of our consideration of oil spill legislation has been like a three-ring circus; the House in one; the Senate in another, and the Administration in a third. Today, with the proliferation of bills that everyone is introducing, I fear that the activity will be colliding in one ring; that is, our consideration will resemble the main event at a tag-team mud wrestling contest on a Saturday night.

What is needed is for all of us to join in the united effort to finally grab the golden ring of final passage of comprehensive legislation to solve this pressing problem. With this in mind, I hope all of us here today will remember that our goal is to get an oil spill compensation bill enacted. The differences among ourselves are relatively small and well-defined.

I urge the parties represented here today to support this bill, H.R. 1465, as a means to accomplish our common goal of enacting comprehensive oil spill legislation. There is a rush all around us to reinvent the wheel and introduce well-intentioned legislation. These additional bills, I submit, are, in the final analysis, merely a variation on the theme, which will be more divisive than decisive.

So again, I appeal to each and every person to focus on the goal, and move forward to final passage of this overdue legislation. Our inaction of the past has left us standing naked and defenseless in the face of this massive spill. Let us not let any more time or oil spill before we face up to our responsibility to act.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Bob. The Chairman is privileged now to recognize the author of H.R. 1465, the Chairman of our Full Committee, the Honorable Walter Jones from the State of North Carolina.

OPENING STATEMENT OF HON. WALTER B. JONES, A U.S. REPRESENTATIVE FROM NORTH CAROLINA, AND CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. JONES. Thank you, Mr. Chairman and distinguished guests at the witness table. I am delighted to have you here this morning.

The unthinkable has happened, a major catastrophic oil spill in American waters. I wish I could say that we were prepared for this inevitable occurrence; but regretfully, we were not.

Even now, nearly a month and one-half after the incident, the clean-up efforts have seem dogged by a Keystone Kop-type of effectiveness. And ladies and gentlemen, let me tell you that the worst part of the spill may be yet to come.

Ours, rightly or wrongly, is a lawsuit prone society. Already, the lawsuits are flying with class-actions being brought in States which are not even directly impacted by the oily tentacles of the spill. Similarly, those in the Prince William Sound area who have seen their way of life and their livelihood compromised by the accident are also wondering how their damage will be compensated.

To date, EXXON has been forthcoming with promises of restitution to those damaged. But I have to question their largess. At what point will EXXON become suspicious and defensive of many claims presented?

There are many questions raised by the *Valdez* spill: Liability; financial responsibility; compensable damages, and the list goes on. Yet, there is no reason that so many uncertainties need to surround this type of incident. For the past 15 years, this Committee has tried to enact legislation which would provide a cohesive, logical regime within which oil spills and their accompanying myriad of questions could be answered.

I regret that it took a tragedy like the *Exxon Valdez* to cause the entire Congress to focus on the issue. Over these past eight Congresses, we have looked at this legislation from most every angle. The time for wholesale changes is well past. The time for delays is well behind us. We have been frustrated too long in our efforts. The time for a comprehensive oil spill law is now.

And I yield back to you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Chairman. The Chairman is also privileged now to recognize our friend from Alaska, the Honorable Don Young.

OPENING STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. YOUNG. Thank you, Mr. Chairman. And thank you for holding this hearing. This is the beginning of the begin-again; because we have worked on this since 1975. I want to compliment the Chairman of the Full Committee and the members of this Committee that have served on the Committee that has passed legislation; and I think it has great merit.

I hope we are not going to reinvent the wheel today or tomorrow, whenever we go through this process. We have had numerous hearings. I do welcome the Secretary of Transportation and Admiral Yost, the people involved in the first hearing panel.

I know there is legislation that they are going to propose; and as Mr. Davis has said, there is a great deal of similarity. In fact, I would like to compliment the legislation when I have just recently learned there are some merits in it I like a great deal better than I did yesterday.

So I want to compliment the Chairman; and as far as the tragedy, let us focus on the disaster of it happening and, at further hearings that we will have today, that we will try to prevent that from ever happening again. I think it is crucially important because we are an importing Nation of oil, whether it be from Alaska or from the OPEC countries, every barrel of oil, up to 50-percent, is on a tanker somewhere within a harbor within the United States.

We must learn from this tragic accident that happened in my State and affected my people. We as a Nation must learn our dependency and how inadequately we are prepared for such an accident, if it was to occur in Philadelphia, to occur in New York, or be it Midland, Texas, or be in L.A. off of Santa Barbara Beach, or Cherry Point in Washington State.

If anything out of this disaster—if we do not learn—then we are all guilty. We must come forth with proper legislation. And I believe the Chairman of the Full Committee has introduced that legislation. I believe the Administration is up to speed with legislation; and what we must not do is to burden this legislation with a lot of easy solutions.

We have got a good vessel. It may not be double-bottomed; but it is a good vessel. And I think we should go forth with this legislation as rapidly as possible, Mr. Chairman; and I do compliment you for beginning this process. And hopefully, by the 1st of June, we will have something on the Floor of the House and over to that other august body, which we are not supposed to mention, and let them act responsibly, as they have not done for the last 15 years.

Thank you, Mr. Chairman.

[The statement of Mr. Young follows:]

PREPARED STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. Chairman, I want to thank you for scheduling this hearing. The grounding and spill from the *Exxon Valdez* that has devastated my state was the result of gross negligence. As crazy as it sounds we are actually very fortunate that the ship belonged to Exxon. A company with the will and the resources to try and make things as whole as possible. I can only shudder to think what the consequences would have been if this accident would have happened to some one ship tanker company which could only be traced to a phone booth some place.

We need national oil spill liability legislation now Mr. Chairman. This committee has passed comprehensive oil spill legislation in the last six Congresses. This committee's efforts have gone for naught in the other body. Perhaps the tragedy which has befallen Alaska we will provide the impetus for some movement on this badly needed legislation. I would hope that could have oil spill legislation ready for action on the House floor by the end of June.

I am proud to be an original cosponsor of Chairman Jones legislation H.R. 1465. This bill represents a workable and balanced approach to oil spill liability. While this bill is the product of ten plus years of this committee's work, it may still be improved. I look forward to hearing from the witnesses today on how we may improve the bill.

Thank you Mr. Chairman.

Mr. TAUZIN. I am glad you did not mention them, Mr. Young. [Laughter.]

Mr. TAUZIN. I now recognize our friend from Texas, Mr. Laughlin.

Mr. LAUGHLIN. Thank you, Mr. Chairman. I am eager to get on with work, and have no opening statement.

Mr. TAUZIN. The Chairman recognizes the gentlemen from North Carolina, Mr. Coble.

Mr. COBLE. I, too, Mr. Chairman, need to get on with the work; and I have no statement.

Mr. TAUZIN. Then, from New York, Ms. Lowey?

OPENING STATEMENT OF HON. NITA M. LOWEY, A U.S. REPRESENTATIVE FROM NEW YORK

Ms. LOWEY. Thank you, Mr. Chairman. I do have an opening statement, although I, too, am eager to get on with the work.

Mr. TAUZIN. I suspected you might.

Ms. LOWEY. And it is good to see you again, Admiral Yost; and welcome, Secretary Skinner and Mr. Hoyle. And thank you, Mr. Chairman.

I am pleased that this body is moving quickly to enact comprehensive oil spill legislation in response to the worst oil spill in the history of the United States. The spill in Prince William Sound was an environmental catastrophe for this Nation.

Never again can we tolerate a situation in which over 10 million gallons of crude oil were spilled into a pristine environment. Never again can we tolerate a situation in which an individual with an alcohol-abuse problem is permitted to pilot a 60 million gallon tanker like the *Exxon Valdez*. Never again can we tolerate a situation in which clean-up efforts are late and inadequate. And never again can we tolerate a situation in which there is no comprehensive system of liability for oil spills and those who are harmed economically and unsure whether they will be compensated for the full extent of their damages.

H.R. 1465 may have the effect of improving response time; and will unquestionably serve to assist people hurt by oil spills to recover their losses. My focus, since March 24th, when the *Exxon Valdez* ran aground, has been working to find ways to prevent such incidents in the future.

Yes, we must be prepared in case a spill does occur; but if the experience in New York Harbor is repeated across the country, 36 percent of the spills are the result of human error. Education, stringent licensing requirements and training of response teams are all avenues which we should pursue to ensure that spills of the magnitude of the *Exxon Valdez* do not happen again.

As a cosponsor of H.R. 1465, I hope that this year we will finally enact comprehensive oil spill liability legislation. I am particularly pleased by the provision permitting States to maintain their own oil spill funds. New York State has an excellent oil spill fund, which was used to clean up over 10,000 spills in fiscal year 1988. The New York fund was used to clean up leaks from underground storage tanks and accidents on the roads when oil was

being transported over land. In addition to responding to spills on the water, H.R. 1465 protects the integrity of New York's fund and oil spill funds in other states as well.

I strongly support this provision. Thank you very much, Mr. Chairman.

Mr. TAUZIN. I thank the gentlelady. The gentlelady from Maryland now, Ms. Bentley, is recognized.

Ms. BENTLEY. Mr Chairman, thank you. I do have a prepared statement, which I ask unanimous consent to have included.

Mr. TAUZIN. Without objection.

Ms. BENTLEY. And I just want to say that I think it is great that we are doing the H.R. 1465 because it comes most timely right now.

[The statement of Ms. Bentley follows:]

PREPARED STATEMENT OF HON. HELEN DELICH BENTLEY, A U.S. REPRESENTATIVE FROM MARYLAND

Thank you, Mr. Chairman. And, thank you, Mr. Davis.

I want to commend both of you gentlemen for calling this hearing today to review once again this committee's seemingly annual effort to enact legislation overhauling existing oil spill liability programs.

The tragic accident involving the *Exxon Valdez* in Alaska's Prince William Sound on the evening of March 23rd, and the mishandling of the cleanup operations by Exxon clearly demonstrates the need for enactment of this bill under consideration.

Mr. Chairman, I was pleased to join the full committee chairman, Mr. Jones, in co-sponsoring H.R. 1465, because I believe assurances need to be made by the Federal Government that the taxpayers will not incur the expensive costs of pollution clean-up operations and that economic relief will be readily available to those legitimately impacted by such spills.

The 11 million gallon crude spill in Prince William Sound also highlighted some very serious shortcomings at all levels in existing contingency containment and clean-up plans.

This committee needs to examine fully the capabilities of the oil companies, the states, and the various applicable Federal agencies to ensure that what appears to be a bungled clean-up operation in Prince William Sound is never repeated.

Mr. Chairman, short of a total prohibition on the ocean transportation of our energy needs, there is no way that Congress can enact legislation nor can the Coast Guard or any other Federal agency impose regulations that would absolutely guarantee that a reoccurrence of the *Exxon Valdez* accident won't happen.

However, through close cooperation of all parties and passage of H.R. 2158, introduced by my distinguished colleague and friend, Mr. Young, which is the subject of this afternoon's hearing, we can reduce the inherent risks involved in the movement of such commodities.

And, equally as important, through the passage of legislation such as H.R. 1465, we can put into place the mechanisms needed to "guarantee" a prompt, responsible clean-up and "guarantee" economic protection for those who are impacted should a major oil spill occur.

The financial burden for all of this should be borne by the oil companies, as called for in H.R. 1465, Mr. Chairman. The taxpayers of the United States must never be asked to share that responsibility, either directly or indirectly.

I look forward to hearing the testimony of today's expert witnesses so that we may have benefit of their knowledge and expertise on this issue, which is directly related to the unfortunate accident that has captured the attention of the entire world.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Helen.

The gentleman from Massachusetts, Mr. Studds, is recognized.

STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS

Mr. STUDDS. I have no statement, Mr. Chairman. I just want to note that the Secretary begins his testimony by commending the

Committee and noting that this bill, H.R. 1465, was introduced before the *Exxon Valdez* disaster.

Mr. Secretary, that is an understatement.

[Laughter.]

Mr. STUDDS. It was first introduced in 1975, by many members of this Committee. It has been reported by this Committee in seven of the last eight Congresses. It has passed the House in three of those Congresses. And I think the gentleman from Alaska was restrained in his comments about the other body.

I thank the gentleman.

Mr. TAUZIN. Mr. Bunning is now recognized.

Mr. BUNNING. I have no opening statement.

Mr. TAUZIN. Mr. Ortiz is recognized.

Mr. ORTIZ. I do not have any opening statement.

Mr. TAUZIN. Mr. Inhofe?

OPENING STATEMENT OF HON. JAMES M. INHOFE, A U.S. REPRESENTATIVE FROM OKLAHOMA

Mr. INHOFE. Yes, Mr. Chairman. I do not have a prepared statement, just a comment; a caution. Yesterday, we heard from Admiral Sipes in the Public Works and Transportation Committee. And something occurred to me; and we had a line of questioning that came to certain conclusions. And that is, unfortunately, there are a number of people in the United States trying to use the tragedy of the *Valdez* to retard or delay further expiration of the Arctic National Wildlife Refuge and the Outer Continental Shelf.

In a line of questioning to Admiral Sipes yesterday, he agreed that in the event we become more dependent upon foreign oil, that will be shipped here by foreign vessels over which the Coast Guard has less jurisdiction and less control; and there could be a greater likelihood of future spills by foreign tankers as opposed to domestic tankers.

It is obvious we do not have the jurisdiction we need right now; and this bill is going to go a long ways to giving us that jurisdiction. But let us have a word of caution not to use this to end up making us more dependent upon foreign oil, and therefore having foreign vessels in our waters creating greater problems and a greater risk of future spills.

Mr. TAUZIN. Spoken like a true Oklahoman.

The Chairman now recognizes the gentleman from New Jersey, Mr. Hughes.

OPENING STATEMENT OF HON. WILLIAM J. HUGHES, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. HUGHES. Thank you, Mr. Chairman. I have no formal statement. Let me just say that in the 15 years that I have served in the Congress, I have spent probably more time on oil spill compensation and ocean dumping than most other pieces of legislation.

I am hopeful, Mr. Chairman, that under your leadership we can finally put the ball across the goal line. So I look forward to hearing the testimony of the witnesses this morning.

Mr. TAUZIN. Thank you, Mr. Hughes. I think now, unfortunately, *Valdez* has given this legislation the kind of momentum that it fi-

nally needs. But I do want to recognize the gentleman for his many, many years of work in this area.

The Chairman now recognizes Mr. Goss for an opening statement.

OPENING STATEMENT OF HON. PORTER J. GOSS, A U.S. REPRESENTATIVE FROM FLORIDA

Mr. Goss. Thank you, Mr. Chairman. Very briefly, I think that we are talking about, in 1465, comprehensive legislation. I think that should be the appropriate goal. And I think that in terms of the accountability, the legislation accomplishes much.

I am not certain yet that we have done all we need to do in terms of incentives for prevention or incentives for better preparation, which I am afraid we have learned at Valdez. And I am looking forward to the testimony.

Mr. TAUZIN. Thank you, sir. The Chairman now recognizes Mr. Pickett for an opening statement.

Mr. PICKETT. Mr. Chairman, I do have a statement for the record. I just want to say that I supported this bill last year, and I did this year; and I hope it will be passed.

[The prepared statement of Mr. Pickett follows:]

PREPARED STATEMENT OF HON. OWEN B. PICKETT, A U.S. REPRESENTATIVE FROM VIRGINIA

Mr. Chairman, recent events have obviously focused greater public attention on the issue we take up this morning, but the need for a comprehensive national approach to oil spill liability and compensation was around long before the devastating oil spill that occurred in Alaska just six weeks ago.

Our distinguished committee Chairman, Mr. Jones, has championed this issue for more than a decade. It is somewhat ironic that when he reintroduced this legislation on March 16, just days before the Exxon *Valdez* ran aground, our ranking minority member declared, and I quote, "The time to act is now, before a major oil spill occurs."

That oil spill has now occurred, and the public is beginning to recognize the shortcomings of current Federal law in this area. We are learning, for example, how oil spill liability is divided among a hodgepodge of separate liability systems. And in time, we will no doubt hear much about how these schemes fail to fully compensate those injured by major oil spills.

I believe that the Oil Pollution Liability and Compensation Act of 1989 represents a vast improvement in dealing with these problems, and I look forward to listening to the views of Secretary Skinner and other officials from industry and government on this issue.

Mr. TAUZIN. Thank you, sir. The Chairman recognizes Mr. Brennan for an opening statement.

The Chairman recognizes Mr. Miller, then for an opening statement. I am sorry, Mr. Brennan. I missed you. I am sorry. Go ahead, sir.

Mr. BRENNAN. Mr. Chairman, just very briefly. In the interest of hearing from the witnesses, I will forego an opening oral statement and submit remarks for the record.

[The statement of Mr. Brennan follows:]

PREPARED STATEMENT OF HON. JOSEPH E. BRENNAN, A U.S. REPRESENTATIVE FROM MAINE

Thank you, Mr. Chairman.

In my home State of Maine, protection of our marine resources is vital. The disastrous oil spill in Prince William Sound has been viewed with great concern by those who depend on a healthy marine for their livelihoods.

As we address national oil spill liability legislation, preemption of existing State statutes is a key issue.

Maine has had a good and effective liability statute and oilspill cleanup fund in place for some twenty years. Under this regime, the Maine Department of Environmental Protection has been able to respond quickly to over 100 spills. The cleanups have been expeditious, adequate compensation has been provided, and extended litigation has been avoided.

There is some concern that the approach contemplated in H.R. 1465 would hamper our State's ability to respond to an oil spill in a timely and efficient manner.

Traditionally, environmental legislation has not preempted State statutes. For example, provisions in Superfund and in the Clean Air Act do not preempt State law.

As we proceed with national oil spill liability legislation, I would urge my colleagues on this Committee not to weaken the protection currently enjoyed by States that depend on the health of their coastal waters. All States deserve strong protection from the kind of destruction we have seen at Valdez.

Mr. TAUZIN. Thank you, sir. Mr. Miller now.

OPENING STATEMENT OF HON. JOHN R. MILLER, A U.S. REPRESENTATIVE FROM WASHINGTON

Mr. MILLER. Yes, Mr. Chairman. Thank you for proceeding on this bill that so many of us have co-sponsored. Just one example now needed on this bill is, when you look at the cost of cleaning up the major oil spills, the current balance in the oil spill clean-up fund is $4 million.

An example for the need for this bill is the current balance in the oil spill clean-up fund just $4 million. And we know the clean-up cost at Prince William Sound is going to go well over $100 million.

There was a spill last year near Anacortes in my State that cost $3 million. That spill alone would have exhausted the fund. This proposed bill will raise the fund to $500 million; long overdue.

I hope that in addition to the creation of this fund that the Committee, Mr. Chairman, will focus on the chain of command. When I was up in Alaska, what became so apparent to me is that under present law, there are just too many cooks stirring the broth.

You have got the State. You had EXXON. You had Alyeska. You had the Coast Guard. I hope when we are through that Federal law will make clear that when there is a major spill, the Coast Guard is in charge. The Coast Guard is responsible. And that the Coast Guard can tap this fund to set up Coast Guard SWAT team in key regions, to compile inventory equipment lists in the different regions; to get on with mapping the key routes.

There is so much to be done, Mr. Chairman. Oil spills happen. Sometimes the damage is limited, but concerns the local community. Other times, as at Valdez, the damage is tragic. The Nation is enraged.

Regardless, we have learned from spills in my State and the tragedy of Prince William Sound, that Federal law is woefully inadequate. And I look forward to our getting on with the job. And I look forward to hearing the Administration's proposals.

Thank you.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF HON. JOHN MILLER, A U.S. REPRESENTATIVE FROM WASHINGTON

Mr. Chairman, thank you for allowing me to participate in today's hearing. While I am not an official member of this subcommittee, as a Member of the full Merchant Marine and Fisheries Committee, I applaud your efforts to rapidly pass H.R. 1465, the Oil Pollution Liability and Compensation Act of 1989. I am an original cosponsor of this bill.

Mr. Chairman, since our time is limited, let me get to the heart of my concerns. Oil spills happen. Sometimes, the damage is limited, but concerns the local community. Other times, as in Valdez, the damage is tragic and the Nation is enraged. Regardless, we have learned from spills in my state and from the tragedy in Prince William Sound that current Federal law is inadequate.

H.R. 1465 helps us improve Federal law. Let me just give you one quick example of our obsolete law. How much does it cost to clean up a spill and what is the current balance of the Oil Spill Cleanup Fund? Well, Mr. Chairman, I'm here to tell you the current oil spill clean up fund has only about $4 million in it. The clean up cost for Prince William Sound is going to exceed $100 million. A spill last year near Anacortes, Washington cost $3 million to cleanup. That spill would have nearly exhausted the fund. The proposed bill will raise the fund to $500 million.

Mr. Chairman, H.R. 1465 is a good bill. I hope, however, that as we work on it, we will think about some of the lessons from the *Valdez* and other oil spills. I've been to Prince William Sound, I've met with the Coast Guard and tanker operators in Seattle, and they have reason for concern. It is important that we address compensation and liability. It is also important that we look at institutional and regulatory improvements, including establishing Coast Guard SWAT teams to respond to oil spills. We should also consider improving the inventories of equipment available to respond to spills, developing management agreements with State and local governments to identify key habitat areas which should be protected, reviewing vessel transportation radar systems and looking into the safety of the foreign and domestic tanker fleet.

Mr. Chairman, our agenda is full. I look forward to an informative hearing.

Mr. TAUZIN. Thank you, Mr. Miller. I should point out that Mr. Miller and the next two Members that I am going to call upon are not technically Members of the Subcommittee, but are our guests today as Members of the Full Committee. And I think it shows a great deal of interest, Mr. Chairman, and the full membership's interest in this critical area.

I am pleased also now to recognize Ms. Unsoeld for an opening statement.

Ms. UNSOELD. I have no opening statement.

Mr. TAUZIN. Mr. Saxton?

OPENING STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. SAXTON. Thank you, Mr. Chairman. I am obviously here today to be supportive of your efforts, Mr. Chairman, and the Chairman of the Full Committee, who has worked for many years—since I have been in Congress and before—on this concept which I think now and have thought in the past is so important.

I know that Mr. Hughes and I are interested to see that there is a provision in the bill which we have fought for over years to preserve state funds, which I think everybody recognizes at this point as very important.

I would go further to say this. On Tuesday of this week, a number of us, after having worked for several weeks in developing a bill which embodies a slightly different concept which might be considered at some point by the Subcommittee or by the Full Committee; and understandably, since it was just introduced, people will need some time to look at it and review it; but basically, I

think that aside from a way to fund clean-ups, it is important to have in place mechanisms to prevent spills from becoming what has become a very difficult situation in Prince William Sound and the surrounding areas.

And so there is currently another bill that addresses this subject from that point; it is H.R. 2291, which I am very serious about. I think it is a very good approach; and look forward to discussing that with you, Mr. Chairman, and the Chairman of the Full Committee, and other Members of the Subcommittee.

Mr. TAUZIN. Thank you, Mr. Saxton. And finally, we are also privileged to welcome the former Chairman of this Subcommittee, Mr. Earl Hutto of Florida.

Earl?

OPENING STATEMENT OF HON. EARL HUTTO, A U.S. REPRESENTATIVE FROM FLORIDA

Mr. HUTTO. Thank you very much, Mr. Chairman. And I appreciate your leadership on this, and the fact that you are having a hearing on this important legislation. As has been pointed out, this Committee has acted numerous times before, as has the House of Representatives. And in view of what has happened at Valdez, hopefully this is going to be the year that we can get something done.

So I hope that we can move expeditiously and enact 1465.

Thank you.

Mr. TAUZIN. Thank you, Mr. Hutto. Before we introduce the first panel, let me state for the record that this Subcommittee believes that its work must be done here in Washington; and that is the reason we have conducted our hearings here, and why we have this hearing today, and why we move to mark-up so rapidly this month.

We will, however, be in Alaska and are planning a visit to Alaska in the August recess. And those of you who wish to be a part of that should now keep that in mind. When the Congress does break in August, we hope to actually visit with the Subcommittee that is chaired by Congressman Studds, to look at not only the progress of the clean-up, but also other issues of importance to the areas in question.

Secondly, we will be on the West Coast in June, I believe, to look at situations in both Portland and Seattle, where similar problems have been experienced. And we will also be receiving the GAO report on the *Exxon Valdez*, I think, in the August hearing. We will be receiving that GAO report in our August hearing in Alaska.

So you might plan to be a part of that with us. It should be an interesting series of hearings.

Ladies and gentlemen, I am pleased now to welcome our first panel; and included in it, of course, is the Honorable Sam Skinner, the Secretary of the Department of Transportation, the Commandant of the United States Coast Guard, Admiral Paul Yost, and also the Director of the Office of Ocean Law and Policy of the Department of State, Mr. Brian Hoyle.

We will begin with the Secretary of the Department of Transportation, the Honorable Sam Skinner. Welcome, Mr. Skinner. We appreciate your testimony.

STATEMENT OF THE HONORABLE SAMUEL K. SKINNER, SECRETARY, DEPARTMENT OF TRANSPORTATION; AND ADMIRAL PAUL A. YOST, JR., COMMANDANT, UNITED STATES COAST GUARD

Secretary SKINNER. Good morning, Mr. Chairman. I do appreciate the opportunity to appear here today, and to reiterate the Administration's strong support for the work of this Committee on comprehensive oil spill liability and compensation legislation.

We have transmitted a bill to the Congress this morning, which I will discuss in a minute. But I want to assure you that many of the contents of that bill have been based upon our ongoing participation with the Committee. Nothing we have done today should in any way impede the work of the Committee which, as I indicated earlier, has been going on for some time prior to the incident in Alaska.

With me, of course, is Admiral Yost, Commandant of the Coast Guard, who has returned, as have I, from our trip to Alaska. Admiral Yost has been there on three occasions. I have been there twice. And if any of your members have questions concerning the current conditions, I am sure we can answer those as well.

It is important that we move quickly, and I compliment the Committee for their desire to move quickly. As you indicated, this Committee has been in the forefront of legislation dealing with spill liability for some time.

I, too, am hopeful that, with the Administration's full and complete support, and the support of the Committee, that we can finally pass into law this year this significant legislation.

We believe, as the Committee does, that the inclusion of the 1984 international Protocols is an essential element of the package. And our bill contains implementation of those Protocols. It has been too long that those Protocols were negotiated and have not been put into law.

As I ifdicated, there is a great deal of commonality between H.R. 1465 and the Administration's bill; but let me go over for a minute several major areas of concern to the Administration, many of which are based upon the experiences that Admiral Yost and I, and the Administration, have had in the last several weeks in dealing with the problems at Valdez, Alaska, and explain them to the Committee as a whole.

First of all, regarding the responsible party liability limits, we recommend that the limits for tankers, at $500 per gross ton, be raised to $78 million. That amount is comparable to the current shipowner liability level under the international Protocols.

Second, we agree that the shipowner levels of liability should be backed with a compensation fund paid for by the fee on oil to a maximum of 500 million per incident. Thas bill would be the qualifying, authorizifg legislation to finance the fund and would extend collection of the 1.3-cent per barrel fee for the five years intended.

We are also, however, proposing that the fund can be raised to a higher per-incident level when the President determines that it is necessary to do so. We do not know the total cost of the involvement in Alaska. It is too early to predict with any degree of certainty the cost of that effort. But my experiences there, and in my

discussions with EXXON who, at this point, is funding it, leads me to the conclusion that having the ability of the President under an Executive Order to raise the per-incident level beyond $500 million may be necessary.

Finally, consistent with long-standing Executive Branch views, we do not believe that compensation funds should be available for a broad range of speculative, third-party damages. However, we would provide that there be no preemption of remedies available under State law for such damages, except to the limited extent necessary to implement the Protocols.

Fourth, we would keep the outstanding balance in the Trans-Alaska Pipeline Fund available for uncompensated costs arising from the *Exxon Valdez* spill, pending resolution of all claims. Also, we would provide for improved enforcement authority under the Clean Water Act. The President could order removal to avoid threats of further pollution; higher civil penalties and court-imposed adjunctive relief would also be available.

Sixth, we establish a high civil penalty, up to $10 million, to be assessed against spillers in those cases where natural resources are destroyed and cannot be restored or replaced. This penalty is in addition to the spiller's liability limits.

With respect to a number of other issues, we support the House approach to inland oil barges, as they are called in the Clean Water Act. We suggest that this category of vessels should be afforded special treatment, due to the low margin of profit associated with its operations; and we are sympathetic.

On the other hand, these barges also operate in congested and environmentally-sensitive areas; and protection from their spills must be provided. Therefore, we support the compromise approach of H.R. 1465 in applying the same liability levels as those for ships other than tank vessels.

We also support your approach in making the domestic fund available to State governments for immediate clean-up costs. In Alaska, the State and the Federal Government are partners as part of the regional response team and its independent agents. We look forward to working with them there and, if necessary, working with them in the future.

We also feel, however, the fund administrator must have control over the direct draw; and we urge you to consider the lesser amount of $50,000 as an initial draw. This would in no way affect the total amount that the State could ultimately draw in incremental levels, as long as the fund administrator could be assured that the necessary agreements between his or her agency and the State are being effectively carried out.

The Department sees no need for the provision in H.R. 1465 that requires the Governor to agree on the level of clean-up. We are comfortable that the mechanism embodied in the regional response teams, where States have a full voice in the level of clean-up, is sufficient to ensure that State Governors' concerns over adequate clean-up are met. Even in a case as complex as the *Exxon Valdez*, we are confident the agreement can be reached, as it always has been in the past.

The implementation and ultimate adoption of the 1984 Protocols are an essential part of our proposal. We must remember that we

may not always have the resources of an EXXON with which to respond to a spill, or a U.S. company with large resources against which we can effectively proceed.

The Protocols were negotiated in 1984, with extensive guidance from both Houses of Congress. Simply put, the Protocols provide high limits of liability for seagoing tankers carrying persistent oil in bulk—$78 million for ship owners and $260 million per incident from the international fund. They offer prompt and certain right of recovery for both public and private victims of oil spills; and they demand compulsory insurance.

I might also add that a great deal of time has gone on since the 1984 Protocols were negotiated. The Protocols were supported initially in House legislation. It is important, if we are to maintain our credibility in the world, that these Protocols be adopted quickly. The international regime is a good financial insurance regime; and assuming our future spill experience, excluding *Exxon Valdez*, remains about the same as during the past 18 years, our financial return would be about equal our contributions to the international fund.

It is important, to maintain our credibility in the world maritime community, that we ratify these Protocols as soon as possible.

Let me say, Mr. Chairman, that the Administration, the Department of Transportation, the United States Coast Guard is available to work with this Committee on an expedited basis in any way possible to provide information or additional thoughts concerning this legislation.

It is our desire to be as supportive as possible of the Committee, recognizing the long-term implications of this legislation, and the need to have it in place immediately.

And so, with that in mind and recognizing there may be other pieces of legislation such as Congressman Young's, to deal with the immediate situation—and I applaud that type of legislation—we cannot forget the forest for the trees. We must work on the trees. We also must work on a comprehensive program, and get it into place while our timing is right; so that in the future, we can be protected from spills, not only of this magnitude, but all other possible spills.

With that, the Commandant and I are available for any questions.

[The statement of Secretary Skinner can be found at the end of the hearing.]

Mr. TAUZIN. The Chairman is pleased to welcome both the Commandant, Mr. Skinner and Mr. Hoyle. Do either of you have an opening statement you would like to deliver?

Admiral YOST. No.

Mr. HOYLE. No.

Mr. TAUZIN. Then thank you very much. Mr. Hoyle, your written statement will be included in the record.

[The statement of Mr. Hoyle can be found at the end of the hearing.]

Mr. TAUZIN. Mr. Secretary, one of the immediate problems that can be seen from the Administration proposal, as well as the proposals that we have been considering, is the fact that the funds may be depleted rather rapidly by a major spill, such as the one we

have experienced in Valdez; and the fact that under your bill, as well as others, it would take five years, at the rate of 1.3 cents per barrel, to actually restore the fund to its full authorized level.

Should a major spill occur, God forbid, before that fund is indeed brought up to its authorized level, of course, the fund would not then possibly be adequate to deal with it. Would you, in the present, support language that would permit a faster filling of the fund, during that first five-year period or during the period immediately following its depletion in satisfaction of the needs of a spill?

Secretary SKINNER. First of all, let me say our bill provides for a borrowing ability, so that we can advance fund spill costs in anticipation of revenues. Secondly, the current available funds, Deepwater Port and Outer Continental Shelf, would also be available, as kind of a starter fund.

We have not discussed an extension of that fee over an extended period of time, other than the five years we have talked about. However, I think obviously, if we had a spill of major magnitude and the funds were depleted, and we had to use the borrowing capability, I think you can assume there would be strong support for, at least an extension of the fee, to make sure that those monies were replenished.

Mr. TAUZIN. Would you object to amendments that, in fact, permitted the collection of a higher cent-per-barrel during the years immediately following a depletion or during the early years when the fund is excessively short, or during the years in which the borrowing authority has been used and needs to be re-paid?

Secretary SKINNER. I have not focused on that; but I will certainly get a written answer back to the Committee on that.

Mr. TAUZIN. Question two, on the borrowing authority. I suppose it probably is much like the borrowing authority under the Deepwater Port Act, where the authority is allowed to borrow additional funds in excess of the fund's authorized limit, using the contributions to the fund in future years to pay it back.

What is the borrowing limits under your proposal?

Secretary SKINNER. Well, I believe the borrowing limits basically go to, as necessary, up to the 500 million; and go greater if the President decides to raise the limit on a per-spill incident basis.

Mr. TAUZIN. Would you have objections to amendments that perhaps actually specified a borrowing authority over the 500 million that either the President or the administrator could, in fact, execute?

Secretary SKINNER. No. I would not anticipate objections. I think what we have tried to do in drafting limits is recognize and learn from our experience in Alaska. And as I said earlier, it is hard. I have been there, I have spoken to the people at EXXON. They are spending a considerable amount of money in a very quick fashion up there; but I have not seen any real numbers to know exactly how much they have spent. When you order stockings for your workers in 100,000 lots—that is an example of the kind of money they are spending. So the numbers are very big. We still believe the limitation of 500 million and 1 billion, if necessary, should cover any spill expenses that we can anticipate.

Mr. TAUZIN. You have heard discussed, in opening statements—and we have had extensive in-house discussions—of the possibility

of establishing regional Coast Guard strike teams, equipped with both equipment and supplies, stationed in regional locations, available for deployment when necessary to immediately respond to a spill; for example, in the first three days, when things might have been different in Valdez.

How would you feel about increasing the fee and dedicating that portion of the increase to those Coast Guard services, such as the strike teams and the outfitting and maintenance of these regional deployment centers?

Secretary SKINNER. Well, maybe I could ask Admiral Yost to give his observations, and then maybe I can fill in.

Mr. TAUZIN. Admiral, would you please do so?

Admiral YOST. Well, the first question is regional response teams, ought we to have them? That is a very expensive proposition; but it would certainly provide effective response. Although I would say the national teams are air-deployable. The team was on-site in Valdez in about six hours after the spill.

As far as the funding goes, I do not know whether this is a good mechanism to fund what is basically a Coast Guard OE type of expense—Operational Expense. So that is a question I will refer to the Secretary.

Mr. TAUZIN. Well, we have seen how effective the regional strike teams were in Valdez; and our concern, of course, from this Committee—that we do better, God forbid, with the next one. And the concern is, do you have money in your current budget to sufficiently outfit regional deployment centers?

Secretary SKINNER. I will answer that for him.

Mr. TAUZIN. Yes, would you please, Mr. Skinner?

Secretary SKINNER. The answer is no.

Mr. TAUZIN. Absolutely.

Secretary SKINNER. And Mr. Chairman, I will make an observation, because Admiral Yost has made this point to me. The Coast Guard is involved in more multi-missions than any other agency of Government. They are involved in a defense mode; they are involved in a sea-rescue mode; they are involved in marine safety; they are involved in navigational issues; they are involved in drug interdiction. And now we have literally hundreds, probably close to 1,000, Coast Guard employees involved in Alaska.

We cannot continue to fund the Coast Guard at the levels we have been funding the Coast Guard over the last several years, and ask them to do these multiple missions.

Mr. TAUZIN. Secretary Skinner, it is worse than that. We hear from the budget committees that, under the budget agreement executed between the House and Senate leadership and the President, we are looking at a $0.5 billion reduction in the recommended budget for the Coast Guard.

Now, how are we going to guarantee the American public, and to all who watched this disaster in Alaska, that the Coast Guard will be better prepared next time with a $0.5 billion slash in its budget operations, if we do not provide in this oil spill liability fund, resources for the Coast Guard to deal with these problems when they occur.

And if you conclude, as I do, that we must, would you support such provisions in this bill?

Secretary SKINNER. Well, I think we would seriously consider it. Obviously, the important thing is how not to shift totally the responsibility from the industry, who benefits to the tunes of billions of dollars in profits annually from the development of this, off of their shoulders and onto the Coast Guard's shoulders.

We have got to find a way. The real major problem is that the contingency plan prepared by the industry in Alaska was totally inadequate. I think I told this Committee, on a scale of 1 to 10, it was a zero. That is a problem that we have got to rectify. And letting them off the hook may not be the way. On the other hand, to find a system where there is a backup—so that if they do not perform, somebody is ready and willing to perform, and has got the proper money and resources—is something we want to work with you on. And there may be a blend between the two.

I just do not want to let the industry off the hook by making them think the Coast Guard is going to do it for them.

Mr. TAUZIN. Mr. Secretary, I am sure that when we get through with our legislation, it will be clear that the industry is not off the hook. But what concerns this Chairman and, I think, the previous Chairman of the Subcommittee, is that all too often, in these great disasters when they occur, where the Coast Guard has a responsibility, it accepts incredible criticism for not being as prepared as the American public would like it to be prepared, from the very folks who cut it short of the finances and resources it needs to respond.

And I suggest to you, as I think you will hear from more members today, that our Committee is determined, as we move this legislation forward, to end that practice of criticizing the Coast Guard without providing it the resources. I think this vehicle offers us a chance; and I would urge your consideration of those kinds of changes in the legislation.

Finally, I would like to address one question to Mr. Hoyle, who is indeed representing the State Department on the Protocol question here; and that has to do with the practice of supertankers coming into the waters just outside the United States territorial zone, and then lightering their ships; that is, transferring their cargo at sea to small vessels which then carry a much lower liability limit, and which small vessels then bring their cargo into port.

In these instances, the question is can the U.S., under current law, require a showing of financial responsibility by the supertankers before they conduct these types of operations and, in fact, in the interim before the Protocols take effect—if we move forward and approve them, as frankly, I hope we do—is there anything the U.S. can do to curtail this practice?

STATEMENT OF BRIAN HOYLE, DIRECTOR, OFFICE OF OCEAN LAW AND POLICY, DEPARTMENT OF STATE

Mr. HOYLE. Mr. Chairman, I think that under existing international agreements relating to oil pollution liability a requirement showing financial responsibility would be very difficult to impose on a supertanker that lighters on what amounts to the high seas in the exclusive economic zone (EEZ) beyond the territorial sea, if that ship does not put into a U.S. port. At the same time, the

United States has jurisdiction to protect the resources and environment in the EEZ.

At the same time, and this is a personal opinion, because there is no Administration policy on this at the present time, but I have talked with the Coast Guard about the problem of lightering, and they are aware of it. They view lightering as a potential law-avoidance mechanism to avoid the reach of some of our environmental control laws. The Coast Guard is considering what kind of a remedy would be most appropriate.

I do not think there is any present law in this country, that would give us the authority to regulate without further legislation tankers lightering beyond the territorial sea. At the same time, I believe that international law gives us the jurisdictional tools needed to protect the resources and environment of the EEZ.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you. Would that problem be solved under the Protocols, were they adopted?

Mr. HOYLE. Well, the Protocols would certainly help from the standpoint of any spill that took place that caused environmental damage in the exclusive economic zone beyond the territorial sea. The Protocols are helpful in this case; but I am not sure that the Protocols are really the best tool to handle the problem of what amounts to an operational discharge in the case of lightering.

We have a continuing problem with lightering, as I understand it, with small spills that take place in the course of those operations. We might want to take a look at a more comprehensive approach toward the problem that you allude to, sir.

Mr. TAUZIN. We may in fact, Mr. Secretary, want to look at the possibility of increasing the liability limits on the ships engaged in this practice, as a temporary means, at least before the Protocol is adopted. I want to call it to your attention this early.

The Chairman is now pleased to welcome the other Members for questions in this early round. We will go by order of seniority again, reversing from majority to minority; and we will also reserve time for the Members of the Full Committee, who are here as our guests, at the end of that round to ask any questions.

We will start by recognizing the Ranking Minority Member, my friend, Bob Davis.

Mr. DAVIS. Thank you, Mr. Chairman. I want to just pick up on the issue of Coast Guard and Coast Guard funding. As you know, this Subcommittee—you, Mr. Chairman; and the previous Chairman of the Subcommittee, Mr. Hutto, and the entire Committee—have been very supportive of the Coast Guard. And we continue to give the Coast Guard more responsibility. We do not continue to give them more money.

First the drug interdiction program, which we asked the Coast Guard to become very much involved in; and now they are spending a lot of necessary time on oil spill legislation. In my conversations with you, Mr. Secretary, I am pleased to see that you are very supportive of the Coast Guard, and indicate to us that you are going to do everything that you can to see that the Coast Guard is properly funded.

We still have the Coast Guard's mission of Search and Rescue, and as we expand their responsibilities in these other areas, as you

have indicated, they are overwhelmed. We want to make sure that we do not cut back on Search and Rescue and the other traditional things they do. We are concerned about the fact that we did not get the increases that the Administration originally asked for. And I would hope that you would be diligent in assisting the Coast Guard in being able to have adequate funding.

Let me just ask a couple of questions. One of the concerns, I think, that we always have is, that we have a lot of funds where money is earmarked for specific purposes; but we never spend the money. We do not spend the money because it helps reduce the deficit budget. And I am sure that you can give us this assurance, that the money that is set aside under this oil spill legislation, the oil spill fund, is going to be spent on oil spill compensation. We do not want to see the money sequestered to protect the deficit.

Can you give us that assurance, Mr. Secretary?

Secretary SKINNER. Well, I guess there is no assurance--ssurance; but I would say that number one, for an extended period of time, this fund is going to be building. There is no way there is going to be any kind of significant revenues available for an extended period of time that would really solve the deficit problem anyway. And I would just pledge that I will do everything I can to maintain the credibility and integrity of that fund, as long as I am in office. I cannot commit for my successor; but I would encourage him or her to do the same thing.

Mr. DAVIS. You talked a little bit about your preemption provision; and I do not quite understand how your preemptive provisions in your bill would work.

Could you explain that for us?

Secretary SKINNER. I was afraid you were going to ask that.

[Laughter.]

Secretary SKINNER. That is, as you recognize, the preemptive provisions we have been working on. That has been a very, very ticklish situation; because we have wanted to follow the Protocol preemptions, but not any more.

Basically, what we would say is that where there are existing State actions that third parties can take for consequential damages, other than to the limits of the liability mentioned in the Protocols, they would be available. And we would have a new Federal cause of action; using State law in Federal courts, allowing parties to make their claims; but allowing them the opportunity to use State law limitations and liabilities.

The problem, of course, deals with what do you do with third parties on consequential damages, which tend to be illusory in nature? You know, the barber shop who did not get as many haircuts this year as they did last year, or something like that. And we feel State action should be available to those people; and so therefore, they would be protected in those claims. But it would be a Federal cause of action, using State law.

But the preemption necessary to implement the Protocols for tankers is called for.

Mr. DAVIS. That means that the States are going to be telling the Federal Government what to do?

Secretary SKINNER. No. No. No. The way it works, and I go back to my days in the private practice, is that a Federal Judge, as they

do every day now in many actions that are tried in Federal Court, they take the State statute of limitations into consideration, State causes of action into consideration and State damage and liability theories into consideration. And in that regard, it would be the same.

Mr. DAVIS. Let me just say, Mr. Secretary, that certainly you have had to be probably the most active Secretary in this Administration since you have taken office. And as one Member of Congress, I am very pleased with the way you have handled yourself as Secretary.

Secretary SKINNER. Thank you.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Davis. Members will note that we are operating, of course, under the five-minute rule; and we have a series of lights to help guide you in the time of your questions.

The Chairman is pleased now to recognize the Chairman of the Full Committee, Chairman Jones.

Mr. JONES. Mr. Chairman, thank you very much. And sitting here, I sense that 1465 is in pretty good shape right now. I shall not jeopardize it by asking questions.

[Laughter.]

Secretary SKINNER. Well, I will not jeopardize it by answering any questions that have not been asked.

[Laughter.]

Mr. TAUZIN. The Chairman is pleased now to recognize for questions the honorable gentleman from Alaska, Mr. Young.

Mr. YOUNG. Mr. Secretary, before we proceed, let us make it perfectly clear—the Chairman's questions about the amounts of money. This liability bill is to be provided for a tragic accident that would occur, where there would be no responsible parties involved; is that correct?

Secretary SKINNER. That is correct.

Mr. YOUNG. In fact, where there are responsible parties involved, this bill which you are addressing, or the Administration bill, does not relieve any responsible party from their duty due to a spill?

Secretary SKINNER. Well, let me say that I asked that question several times. Let me say that how this fund works—it works much the way a risk retention pool or an insurance pool works—in that the industry as a whole, after a certain levels of liability, contributes into a fund, as an insurance fund. These basically could be viewed as insurance premiums. The industry spreads the risk across the industry. That does not relieve them from the other damages that they are liable for; but on the clean-up effort, that insurance fund of $0.5 billion to $1 billion is the vehicle; and it is paid for by these 1.3-cent, what I would call an insurance fee, into the fund.

So in this particular case, the liability for the clean-up would come from the insurance fund, paid for by the industry as a whole. We do not have that at this point.

Mr. YOUNG. Well, we do not, and I appreciate that. But in no way does this relieve, like, EXXON's responsibility in the Prince William Sound at this time. They would still be responsible for the clean-up and containment, the whole gamut, the second degree. This fund would not take that away from them?

Secretary SKINNER. No, and in fact, it strengthens the action that we can take against a responsible party, because we can now, by judicial order, order the spiller to take removal and abatement actions, which we otherwise could not.

Mr. YOUNG. I want that clear.

Secretary SKINNER. Yes, I know. I appreciate that.

Mr. YOUNG. Secondly, as the Chairman mentioned, and I agree with him 100 percent, Admiral Yost and previous Admirals have been under tremendous criticism; and they should not have been; because this Committee has tried to fund, and the Administration has tried to fund, the Coast Guard. But through our process, the Coast Guard always sort of settles to the bottom; and that is not a joke, Admiral.

[Laughter.]

It settles to the bottom. You are not adequately funded. And the Chairman led up to the concept of what really would be a trust fund set aside for the Coast Guard, to have that money available so it does not come out of the operating budget; because I can assure you, in this glow of disaster now, we are all excited about this. But a year from now, the Admiral will come down with a request for monies for clean-up under this bill which we will pass, and it will probably get cut. And I do not want that to happen.

So I think it is important that this Committee, with this legislation, make the monies available so it does not go through the appropriations process; that it is available to the Secretary of Transportation and the Coast Guard so that they can, in fact, call upon it any time.

Now, neither one of our bills do that, I do not think.

Secretary SKINNER. That is correct.

Mr. YOUNG. And I hope that you will look at that very closely. I know some people object to that system, including the Appropriations Committee; but I think we ought to look at it and make sure it happens; because the public is demanding this, and yet the public will be the one that says, "Well, you know, we need the money for this program and that program."

Secretary SKINNER. Well, this money in the fund does not go through the normal appropriation process, as you understand.

Mr. YOUNG. I understand that.

Secretary SKINNER. Congressman, I am not unsympathetic to your idea. You understand it is a creative idea that, I think, in the user-fee concept of the administration should have great reception. And Admiral Yost and I just passed notes here a second ago about it. So it is a suggestion we are seriously exploring.

That is the kind of give and take between the Committee and the Administration I would like to see.

Mr. YOUNG. Mr. Secretary, the last question I have—and I am trying to keep it under the five-minute rule—the TAPS provision, which is dear to my heart in the State of Alaska, and the industry, it has approximately $250 million in it now. It was capped at $100 million.

Under our provision, it is rebated. Under your provision, it is not rebated; it is fenced in, is my understanding.

Secretary SKINNER. That is correct.

Mr. YOUNG. It is fenced in to be used for the *Valdez* spill.

Secretary SKINNER. And other spills that might happen, you know, if any might happen before passage of comprehensive legislation. It would be available for that situation, and any others.

Mr. YOUNG. And then, when that is over, the money will be rebated?

Secretary SKINNER. No, nor does it go into the regular fund. It is used for the purpose of maintaining the TAPS fund, so that the fund has some sufficiency to it until all these claims are settled.

Mr. YOUNG. Well, see, there is where we have a little difference.

Secretary SKINNER. I thought we might.

[Laughter.]

Mr. YOUNG. Because I had understood it would be rebated; because, Mr. Chairman, I hope that you understand; this is money that we collected. And we are about to make sure, under our bill, it is, in fact, rebated, or at least stays in a fund for any other future spill.

I do not really want it to go into the Federal Treasury, to be spent on something that I do not think is worthwhile. If, in fact, we could earmark it to go to a fund escrowed for the Coast Guard to be actively involved in Alaska, I might think about that. But you are going to have a little problem, otherwise.

Secretary SKINNER. You are not the only one.

[Laughter.]

Mr. YOUNG. All right. Thank you, Mr. Chairman.

Mr. TAUZIN. The Chairman recognizes the gentleman from Texas, Mr. Laughlin.

Mr. LAUGHLIN. Thank you, Mr. Chairman. And Secretary Skinner, once again, it is a pleasure seeing you. As Mr. Davis accurately pointed out about your activity, I am also, as you know, a member of the Aviation Committees, so I can vouch that you have been very active, and I appreciate the candor that you have given that Committee, as well as this one.

Following up on what Mr. Young was asking you about the TAPS fund, I understand that if that approximate $250 million has come, 94 percent of it or thereabouts, has come from three companies primarily—BP America, ARCO and EXXON. And I understand that in that very area, that CHEVRON, MOBIL and TEXACO operate substantially more vessels, carrying more petroleum products than does BP America.

And I was just concerned about the provision in the Administration bill not rebating that money to those that had paid into it, from a fairness viewpoint. Because it seems to me that vessel owners operate in that area who have not paid into that TAPS fund—are getting a real advantage. And I wondered what your observation was.

Secretary SKINNER. I think we have drawn a compromise that, as I understand it, takes care of it. And now I am on murky waters; but I think this is the way. This was also the subject of a debate late yesterday afternoon at the White House. And it is my understanding that we have drafted it in a way that those people that paid into the Deepwater Port and OCS funds, that their contribution, if that money is rolled over, will be recognized as a contribution and assessed against that amount due and owing.

It is like a carry-forward; but it is not a credit. In other words, it is only used up to the amount that, in a given year, you would be responsible for. If you had 10 million you had paid in, you owed 11; you would have owed 1.

If you had 10 million that you paid in, you only owed 9; you would get credit for the 9, but you would still have 1 million to take over to the next year. That device and mechanism of a credit, but not a refund, is to take and even out the responsibility into this fund for the very reason that you talked about. And that is the way I think we came down.

Mr. LAUGHLIN. Thank you very much, Mr. Secretary.

Mr. TAUZIN. The Chairman recognizes for questions Mr. Shumway.

Mr. SHUMWAY. Thank you, Mr. Chairman. Mr. Secretary, I have just a couple of questions, following up on the Chairman's question regarding preemption.

First, if the Administration bill contains a Federal cause of action, using State laws as you have described, does that count under the Federal limit on liability, or is it separate somehow from that Federal liability limit?

Secretary SKINNER. To the degree the Protocols apply, it goes in the Federal limit. To the degree they do not, it is a State limit.

Mr. SHUMWAY. But it seems to me that one of the primary purposes of H.R. 1465 is to eliminate the present patchwork system of funds and liability laws. The Administration's bill does not preempt State liability laws or funds; and it seems without that kind of preemption, we still may well have a patchwork system which could create confusion, delays in clean-ups and damage awards.

I am especially concerned that when we are facing a crisis, there may be some side-stepping or evasion of responsibility because of what seems to me still to be a patchwork that may be in place.

Secretary SKINNER. Well, it is a very complicated area. As you know, we probably do not have a law right now because of some preemption issues over in the other body. And we are trying to come up with some constructive ways to have these Protocols implemented, but get over what we consider to be a major hurdle. And they are separate from the bill's limits in those non-Protocol actions. And of course, money will be available from the fund for ongoing clean up action.

So it is not a matter of having to wait till the end; it is a matter of making sure that the money is available to draw on, and letting the cause of actions continue. It would make no sense to wait till the end to have these people draw the money, because it just would not be available. So it is a draw against future litigation. And to the degree it is not preempted, the limits do not apply. And the State limits, which are what I was talking about, apply directly.

Mr. SHUMWAY. Well, I think to the extent that we can, through this bill and the Protocols, address some of those complexities, we would certainly be out in front in terms of winning this battle. After all, it's often the "complexities" which give rise to lawsuits, and lawsuits are what create confusion and lasting problems.

I think our purpose should be to simplify as much as we can, make clear the lines of responsibility. So I, for one, am going to work toward that end as we consider this legislation.

Secretary SKINNER. Well, I think there is a lot of give and take that is going to have to occur here; but I think, as the Chairman has pointed out, if there ever was an opportunity to have some give over in the other side on this issue, I hope it would be now.

Mr. SHUMWAY. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Shumway. The Chairman recognizes the former Chairman of the Subcommittee who has, from time to time, exhibited some interest in this legislation, Chairman Studds.

Mr. STUDDS. Thank you, Mr. Chairman. Many of us have just been sitting here reflecting back over the years. I observed to staff when I came in that this is the first time in eight Congresses there have been so many bright lights in the room when we considered this bill.

The staff response to that—that is to say, response on the part of staff who was here in 1975—was do not worry, they will be gone by the 1995 hearing on the bill. And in that connection, Mr. Chairman, I think we may need a little more help here.

And I do not know, Admiral, whether you can arrange this, or perhaps if there are some oil industry folks behind you, I think that when this bill is before the Senate, we could use one minor spill; and I think one more major catastrophe when it is in conference might just be what we need. So if you can arrange that far away somewhere.

Secretary SKINNER. No, Admiral. I am going to overrule him on that.

[Laughter.]

Mr. STUDDS. All right. My question is really for Admiral Yost, and it has to do with oil spill response, you will be palled to know. In 1977, President Carter set, as a national goal, an ability to respond to major oil spill incidents anywhere in the country within six hours. That would have required 14 oil spill strike teams.

In 1979, the Carter Administration decided instead on 11 teams. In 1981, the Reagan Administration cut that back to three. In 1987, I believe on your watch, Admiral, with the closing of the Atlantic Coast Strike Team, we were left with two.

What that means is that if the next incarnation of the *Argo Merchant*, the *Argo Merchant II* runs aground off Nantucket Shoals, or Long Island Sound, or maybe even Kennebunkport next winter, the nearest Federally-operated oil spill strike force will be not in Boston, as President Carter promised 12 years ago, but in Mobile, Alabama.

Am I right so far?

Admiral YOST. You are very correct, sir. But go ahead.

[Laughter.]

Mr. STUDDS. When the Coast Guard disbanded the Atlantic Strike Team two years ago, the Coast Guard prepared an assessment stating that this action would have no significant environmental impact. The reason was that private oil pollution clean-up equipment would be available to handle many oil spills except—now I quote from the Coast Guard's assessment—"Except in the area of maritime pollution response, particularly offshore, where there are far fewer alternatives and for some clean-up capabilities, there are no alternatives."

I think the English translation of that is that it will be fine if the spill occurs in Walden Pond; but if it happens in the Atlantic Ocean, we have got some serious problems.

The Coast Guard document also said, on page 2, the elimination of the Atlantic Strike Team, "Will not diminish the Coast Guard's maritime response capability."

I was reassured until I got to page 3, which says and I quote, "The primary impact will be response time in areas currently served by the Atlantic Strike Team."

Translation of that is, the entire Atlantic Coast and the Great Lakes.

It goes on to say that the critical time in responding to a spill is the first two-to-three hours. But that since the existing strike force in Elizabeth City, North Carolina—that is, before we got rid of it—"Will be very hard-pressed to respond to the Northeast in that time frame. The discussion is already about an incident that is past its immediate response phase. An additional two hours is not likely to have a serious effect if the situation is under some sort of temporary control. And if it is not under control, it is not likely that the extra hours would hurt anymore."

The Coast Guard also said—this is a 1987 document—that, "Generally, oil spills are messy; but less critical than chemical spills. And the addition of two and one-half hours transportation time is not significant."

I like you too much to want to hear you say that in Valdez. And I really do not want to have to hear you defend that so-called environmental assessment on Nantuckett. And by now, you have probably figured out what the question is.

[Laughter.]

Mr. STUDDS. In light of everything we have gone through, which has led not only to 10 or 15 years of these hearings, but finally to the attention of the press, which was not here for the preceding 15 years, can we count on the support of this Administration for amendments to this bill that I think many of us have every intention of adding, to reestablish at a minimum the Atlantic Strike Force Team, and to purchase and pre-position additional offshore oil pollution response equipment in strategic locations around this country, and using money from the fund under this bill to do so?

Admiral YOST. Well first, I think that you really have not interpreted that environmental statement correctly. What it says really can be summarized in about three sentences.

It says, because we got a major budget cut, we no longer have the money to keep everything active that we had before; therefore, we are going to cut one of our strike teams. And if we get the $0.5 billion cut somebody has talked about earlier, we will probably cut the Pacific Strike Team. We will keep the one in Mobile active.

Mr. STUDDS. Did you hear that, Mr. Young? The Pacific Team is gone.

Admiral YOST. The Pacific Strike Team. We are going to keep the one that will serve Kennebunkport and you up in Boston.

Mr. YOUNG. Would the gentleman yield?

Mr. STUDDS. Yes.

Mr. YOUNG. You can be assured, before this is over, we will have a strike team in the Prince William Sound.

[Laughter.]

Mr. STUDDS. I have that feeling; but the Admiral is explaining.

Admiral YOST. And so that is what the environmental statement says. Now, to answer your question, would I like more strike teams? Do I think that we should have more strike teams?

I think that what we have seen in Prince William Sound makes us all very much aware of the time it takes to get a strike team and its equipment to the scene.

Mr. STUDDS. But my question is, would the Administration support amendments to finance these from the fund?

Admiral YOST. That is what the Secretary and I were whispering back and forth about; and basically, the Administration does not have a position. We have not been asked that. But if that is some sort of a user-fee type of thing, sounds like it might be salable. And the Secretary has promised me he will talk to me about it.

Mr. STUDDS. Well what, are you going to sell it to one another?

[Laughter.]

Admiral YOST. Well, everybody has a boss, even the Commandant. Even the Secretary, perhaps.

Mr. STUDDS. Well, be on notice that this Member certainly intends, and I suspect with some fairly strong bipartisan concurrence around here, to try to do precisely that. And we hope we will do it with the support of the Administration.

Thank you, Mr. Chairman.

Mr. TAUZIN. I might mention to the gentleman, the Chairman is prepared to have amendments drafted by the time we reach markup on that very point.

The Chairman is privileged to recognize for questions Mr. Coble now.

Mr. COBLE. Thank you, Mr. Chairman. Gentlemen, good to have you all here this morning. Mr. Chairman, as you said at the outset, this is an exercise in no small way in 20/20 hindsight. I am going to do just a little bit of that now.

Some weeks ago, when we had our first hearing, I commended EXXON for its having been a good corporate citizen in years gone by. I condemned them for the inexcusable oil spill that occurred in Alaska.

Now, depending upon who is doing the speaking, some indicate to me—and incidentally, I wished them well as they went about repairing their credibility during clean-up procedures. Now, depending upon who is doing the talking, EXXON assures me that everything is going fine. Other people assure me that things ain't going so fine.

And Admiral, some time, at a time mutually convenient to you and me, I want to talk to you in detail about this. And I will call you; and we will do that, because I am very concerned about this.

Mr. Secretary, I am still a little bit bothered by the preemption necessary to implement the Protocols. That is not your fault. You have waded through this water a couple times. Let me do a little bit more studying on my own. If I still have questions, I will get back to you.

Secretary SKINNER. That will be fine.

Mr. COBLE. You commented, Mr. Secretary, as did we all, about the cutback of the Coast Guard. Some recent years ago, we ham-

mered out what was called a simplified tax bill. Well, legions of my taxpayers back home assure me that it is not simplified at all.

My point is, the revenue code remains very complex. And I do not know the answer to this question with certainty, and perhaps you do not know. But I want to be doggone sure that there are not loopholes—and as we know, there are various and sundry loopholes in the tax code—that do not permit any guilty spiller of being able to realize some fiscal benefit through tax write-offs as they go about clean-ups. And I am not expecting you to know that.

Do you know whether or not that is possible, Mr. Secretary or Admiral Yost? I do not know. I have admitted my ignorance.

Secretary SKINNER. Let me say that that was, as we drafted this bill, with its Revenue Code implications, that was of utmost concern to us; and that is why the question we had on the credits versus the carryovers, and when they apply and when they do not, was so important. Because that would be an example of where someone might, in the first year, get a tax rebate.

On the other hand, there has been a great deal of discussion, as you know, in some quarters, as to whether or not the cost of a clean-up should be deductible, as any other negligent act cost might be deductible to a corporation. To the degree EXXON, if they are going to spend $500 million in Alaska this summer, gets an operating expense deduction for those operating expenses, some might perceive it as a windfall. Others might perceive it as a business expense consistent with long-standing tax practices for expenses involved in paying for an act of negligence.

But I think we are going to have to be careful as we walk through this that we do not give multi-billion dollar corporations an accidental tax break that the tax lawyers in some of these great firms throughout this country find for them. So it was the subject of discussion yesterday at the White House, and it will continue to be so.

Mr. COBLE. Good. I appreciate your response to that, Mr. Secretary, because we do need to be careful about it. I do not want to see anybody being rewarded as a result of negligence, wrong-doing, in this area.

I thank you all again for being here. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Coble. The Chairman recognizes Mr. Hughes for questions.

Mr. HUGHES. Thank you, Mr. Chairman. And I, too, want to welcome Mr. Secretary, Admiral Yost, and Director Hoyle.

I want to follow up, if I could, just briefly on the colloquy that you had, Admiral Yost, with my colleague from Massachusetts relative to the response team. It is my recollection that about the same time that we dismantled the team in North Carolina, Elizabeth City, that we also cut back dramatically on our research efforts to try to determine how we can respond to these spills. We have not really developed enough capability.

In fact, I heard—I think it was Admiral Robbins, is it?—in Alaska, talking today about attempting to develop new methods to handle the oil. It is very difficult to clean it up now. Much of it has sunk to the bottom, in balls, as I understand.

And my question is, is it not true that as we dismantled our rapid response teams, we also cut back on our capability to under-

stand what impacts oil has and how to attempt to collect that oil and dispose of it in that same time frame?

Admiral YOST. It is true, we did that. You may also remember, Congressman Hughes, that in my first year as Commandant, I did away with the Office of Research and Development within the Coast Guard. We no longer could get enough money in that R&D appropriation budget year after budget-year to make it reasonable to have a separate office. So I did away with the entire Office of Research and Development.

Now, if there is any place that we need research and development, it is in innovative ways to clean up oil.

Mr. HUGHES. But we do not have the capability today, do we, to clean up oil or chemical in really choppy weather, high seas?

Admiral YOST. No, we do not. We do not have any sea boom that watches properly in a heavy seaway.

Mr. HUGHES. Well, that program was dismantled, was it not, that was looking at those capabilities?

Admiral YOST. We have cut back a lot of our R&D program, including the oil spill.

Mr. HUGHES. Well, where is Admiral Robbins going to turn now for that capability, as we attempt to find out just how——

Admiral YOST. Admiral Robbins has been asking EXXON to do it. What really has happened, we have a number of people in the United States, myriads of them, all the way from crackpots to great scientists, who are writing letters to us and to EXXON with the ideas that they have for development.

EXXON has pulled together about 18 or 20 scientists from their organization, and they formed a task force.

Mr. TAUZIN. Would the gentleman suspend? We need a little more order in the room. Some of the Members are having difficulty following the conversation. Thank you very much.

Admiral, proceed. I am sorry.

Admiral YOST. So EXXON has pulled together a little task force of in-house scientists, and they are examining each of these ideas. Hopefully, there will be a gem in those that we will be able to use; but we do not know.

Mr. HUGHES. Well, Mr. Secretary, I am very happy to hear that you are going to consider possibly earmarking a portion of this fund for operations and maintenance. That seems to me to fit right in with the pattern on user-fees in the Administration, as you suggested.

I hope, Mr. Chairman, we also consider possibly earmarking some of these funds for that research. In addition to cleaning it up, we need to develop additional capabilities to clean it up, something we do not have.

Mr. TAUZIN. If the gentleman would yield?

Mr. HUGHES. I would be happy to yield.

Mr. TAUZIN. In the last panel we had on the first hearing on the Alaska oil spill, we had EPA representatives here, the response agencies, who conceded the same point the Admiral has just conceded, that R&D funds—in fact, funds directed toward this very problem—have been cut or reduced over time.

And the staff is looking at what we might do in this bill either to assist EPA or to in fact assist the Admiral in restoring that section.

Mr. HUGHES. Because I know what is going to happen—it has happened for the last, at least, 10 to 12 years—everybody supports the Coast Guard. It is sort of like the old circus shell game; you know, watch the pea. And it is hard to find out what happens.

But the bottom line is that, in your office, Mr. Secretary, mass transportation is very important to a lot of people, and Amtrak is very important. And in the shuffling as to how we are going to meet budget targets, why, Coast Guard gets clobbered each and every time. And this is an ideal opportunity for us to earmark monies that should come from the industries, really. That is where it should come from.

One additional question I have, Admiral, is who looked at the Alyeska Plan, anybody? I understand they were the lead agency in Alaska in developing a rapid response.

Admiral YOST. Well, the Alyeska Plan was required as a condition of their State-issued permit to put in the loading facility in the pipeline. So the State looked at that plan; I am sure the Coast Guard had some input. But it was a State-approved plan.

Mr. HUGHES. It sounds to me like it was all on paper.

Admiral YOST. It was a paper plan for the most part.

Mr. HUGHES. But who was looking at it to see whether or not we actually had the capability of responding?

Admiral YOST. The State of Alaska had that responsibility; and I think that they have said that there were not enough drills and exercises done. Some of the equipment had deteriorated. Alyeska did not report to the State some of the deterioration that they should have reported, like a barge out of commission. So there is plenty of fault there to go around, I am sure.

Mr. HUGHES. Well, I think Mr. Miller said it ably. Obviously, we have a lot of cooks. We need to have somebody in charge, looking at the total picture, assuring this country that we have in place the equipment, the trained manpower and the plan—something we did not have, certainly, with the Prince William Sound Spill, the *Valdez* spill. If nothing else comes out of it, if we can pass the oil spill compensation legislation and develop that capability in the Coast Guard, I think that perhaps it will all be worthwhile, hopefully.

Admiral YOST. Well, Mr. Hughes, as I remember, there was a great desire on the part of the Administration at the time that Alyeska and the pipeline was built for the Coast Guard to put Federally-supported equipment in there—Coast Guard equipment and trained manpower. It was the Congress that felt that ought to be on the back of industry; and industry should do that. And industry then was required to do it.

I do not know which was the right way to go. And now we have come full circle in saying, well, maybe the Coast Guard ought to do it, if the Federal Government going to have to pay for that.

Mr. HUGHES. I understand. Mr. Chairman, I know my time is up; but I just want to suggest to the Secretary—I heard your suggestion that we should not be engaging in speculative damages, and I agree with that. I just hope, Mr. Secretary, you are not talking about the potential loss that businesses would sustain, for instance, if there is a catastrophe.

They are talking about oil and gas development off of our shores, off of New Jersey. We have a lot of small businesses that depend upon that four months. They have to make their mortgages in four months. And a spill off of our shore would decimate the tourist industry. So I hope that is not what you are talking about.

Secretary SKINNER. No. There is significant right of recovery under our proposed bill for third-party damages, and what is not covered there is available under the State causes of action, which is the compromise we have tried to draw here.

The compromise, I might add, is of the type that may be necessary to get this through, based on the heavy resistance it has met at the Senate.

Mr. HUGHES. I thank the Chairman.

Mr. TAUZIN. I thank the gentleman. The Chairman wishes to observe first that, at our prior hearing as well, we received testimony that in the first three days of the *Exxon Valdez* spill, that the company was experimenting, testing dispersants, testing burns; all of which were a part of the contingency plan that was supposed to be executed.

I think the gentleman's point was well-made.

Second, I would like to recognize the Chairman of the Full Committee, and ask for what purpose he wished to be recognized.

Mr. JONES. Mr. Chairman, I asked to be recognized out of order for a brief statement.

Mr. TAUZIN. Any objections?

[No response.]

Mr. TAUZIN. Without objection.

Mr. JONES. I would like to observe, that to Secretary Skinner and Admiral Yost, thank you for being here this morning. We appreciate your help.

But after this bill leaves this Committee, it must go before the House Public Works Committee. So therefore, we will need your help, and your help there, just as much as we do here.

Thank you very much.

Mr. TAUZIN. Thank you, Mr. Chairman. I also want to point out to the Committee that the National Research Council has just recently issued a volume dealing with dispersants, and how they can and should be used in the case of a spill. If you would like a copy of that as we prepare for the markup on the 24th, you might request it from the Subcommittee staff. We will make sure you have a copy.

The Chairman recognizes now, Mr. Bunning.

Mr. BUNNING. Thank you, Mr. Chairman. I would like to address and follow up on some questioning that Mr. Coble did.

EXXON, being a major oil firm, is able to handle the cost of cleaning up this spill. In my understanding in your response to Mr. Coble, you said that they would, under the current Tax Code, be able to deduct the cost of the clean-up. Is that what I understood you to say, Mr. Secretary?

Secretary SKINNER. I am not a tax lawyer, but I am a lawyer. And it is my understanding that the acts of negligence, the costs of a company—not just EXXON, any company—that it incurs operating expenses as a result of an act of negligence, under the Code,

and has a right to deduct those expenses as normal operating expenses of a business.

That does not mean fines are deductible; but I am talking about expenses of the clean-up.

Mr. BUNNING. Do they also have fully insured coverage? Is it your understanding that they have fully insured coverage, presently?

Secretary SKINNER. Well, they have; I believe they have testified, but if not, I understand they have about a $400 million policy limit. I think they will probably go through that before this is over. I do not think insurance will cover all their expenses before it is over. But that is just speculative.

I do know that they are spending—workers are getting $16 an hour. They are talking about working eight to ten hours a day. They are talking about having close to 3,000 workers on the beach, and another several thousand behind the scenes. So you are talking about a work force right now of about $70,000 to $75,000 an hour. And they are going to work from dawn to dusk, 16-hour days.

So at that rate, 70,000 to 100,000 an hour, 20 hours a day, plus supplies and equipment and pumps, they are going to spend a lot of money.

Mr. BUNNING. The point I am trying to make is that the cost of insurance to EXXON is a deductible business expense.

Secretary SKINNER. That is correct.

Mr. BUNNING. The cost of the clean-up is a deductible business expense.

Secretary SKINNER. Yes.

Mr. BUNNING. And that is passed on?

Secretary SKINNER. But they are not both deductible. In other words, if they are reimbursed for insurance, they cannot also deduct the expenses, and then also get the insurance reimbursement.

Mr. BUNNING. Well, they get the reimbursement. But if they go past?

Secretary SKINNER. Yes, the excess over the policy limits would be a deductible expense, I would believe.

Mr. BUNNING. Then EXXON is not responsible, actually, for any of the cost, except if they go past their liability insurance.

Secretary SKINNER. Well, they paid for the insurance.

Mr. BUNNING. But that is a deductible business expense.

Secretary SKINNER. Right. So they paid a deductible business expense to pay the premium on 400 million in liability, and to the degree they deducted those policy premium expenses, it was deductible. To the degree they go over the 400 million, it is deductible. And to the degree they are reimbursed from their insurance premiums up to 400 million, it is reimbursed and therefore not deductible.

But I only got a B in taxes.

Mr. BUNNING. I did not take taxes.

Secretary SKINNER. Actually, it might have been a B plus.

Mr. BUNNING. What I am getting at is the eventual payer of the clean-up is going to be the taxpayer, through the cost at the pumps, through the cost of additional price in gasoline or crude oil.

What if EXXON was not the spiller? What if a small company other than EXXON were? That is what we are talking about, Mr. Secretary, under this bill. If some other carrier other than a major oil firm was not the carrier, not the spiller, then this piece of legislation would then come into effect.

Secretary SKINNER. Right. Well, it would come into effect if you had a foreign tanker where you could not perfect—the real problem is perfecting judgment. Right now, there is no money in these funds to do the clean-up. If it had been somebody besides EXXON, we would be marshalling resources and coming in with supplemental appropriation on an emergency basis for probably $0.5 billion.

Mr. BUNNING. And the taxpayer again would be paying that tab?

Secretary SKINNER. Right.

Mr. BUNNING. I would like to also follow up on your statement here of—I see my time just about up—the sixth point that you make in your statement—we establish a high civil penalty, up to $10 million, to be assessed against spillers in those cases where natural resources are destroyed and cannot be restored or replaced.

Do you believe that $10 million is a high civil

Secretary SKINNER. Well, the current penalties under the law are $5,000. The new penalty would be increased to 25,000, plus a new civil penalty for destruction of 10 million. You know, what is enough? There was a time when $10 million was a substantial penalty. Whether that is still true or not, I do not know.

Mr. BUNNING. Well, I am sure if the Coast Guard would get an additional funding, they would not mind taking care of the clean-up. But the problem I am having with the $10 million penalty, it does not seem to be high enough, considering the ability of those to pay that spill or cause a major spill.

My time is up. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman. The Chairman recognizes Mr. Carper for questions.

Mr. CARPER. Thank you, Mr. Chairman. Welcome to each of you today.

Two questions. One dealing with preemption of State laws. If it has already been covered, I apologize. I understand it has been touched on; but I think it is an important issue. And second, I want to talk about contingency plans for clean-ups in ports as opposed to once the ships have left port.

Start with the preemption of State law. Legislation that we have passed here repeatedly in the House has run aground in the Senate, and it seems to run aground on a reef of preemption of State laws. I understand that the Senator from Maine, who is Majority Leader in the Senate, has been troubled by our preemption of State laws. And he has held out, and says let us not preempt State laws.

My understanding is that the Administration's bill tries to run between those two shoals. If you will, could you just spell out for us, how again does it do that?

Secretary SKINNER. It is an attempt to run between two shoals with a first-class pilot; not me, but the guy that sits over in the White House. The attempt is to make sure that the Protocols, that the preemption that deals strictly with the Protocols, is adhered to.

Yet we do not, at the same time, take away third-party damages that are available under State law.

So we basically create a cause of action in Federal Court to concentrate this; yet at the same time, making State law available to the plaintiffs in those cases, as far as damages, cause of action, statute of limitations. So the damages that are not covered under the Protocols and are available as third-party causes of action in State Court would be put forth as Federal causes of action in Federal Court, with State law applying.

Mr. CARPER. Does anyone else on the panel wish to add to that, anyone?

[No response.]

Secretary SKINNER. Nobody wants to touch it.

[Laughter.]

Secretary SKINNER. I do not blame them.

Mr. CARPER. Unfortunately, we have to.

Secretary SKINNER. I know we all do. And you are absolutely right. We would have legislation had we been able to navigate through these shoals. This is an attempt by us to help the Committee navigate through those shoals, because we need legislation and we cannot wait another year. And we cannot send a bill, and go through all this work; and then send it over to the Senate and have it get hung up because of causes of action and the positions on preemption. We have got to find a way to satisfy it.

Mr. CARPER. The second question deals with contingency plans for clean-ups. This might be better directed to Admiral Yost, I am not sure. My understanding is—in fact, just walk me through it, if you will, Admiral—contingency plans for clean-ups within the port, contingency plans for clean-ups once the vessel has left port.

I understand that the Coast Guard certainly has a role in this; but what I am particularly interested in is the role of the Coast Guard in ensuring that the private sector, in this case, has a contingency plan that they are ready to put into place, and to be effective.

Admiral YOST. That is the basic role. In each region, let us talk about each port. Each Coast Guard captain of the port has a captain of the port contingency plan that is basically an inventory of the amount of equipment that is available in that port area from the private sector.

In addition, the detailed contingency plan is required from each port facility that off-loads or on-loads oil, the terminal. And the terminal, as a condition of its permit to operate, the Coast Guard requires an operation manual of which a chapter is their contingency plan. That contingency plan indicates how much inventory of clean-up gear, and how they will use it for a clean-up at the terminal.

Now, once a vessel leaves a terminal, there is no industry contingency plan for, let us say San Francisco Harbor, or Delaware Bay. There is no industry contingency plan because the industry does not own Delaware Bay. They own only their one terminal. And the thing that pulls these contingency plans together is the captain of the port for Delaware Bay—the captain of the port in Philadelphia in this case—has an inventory of all the equipment that is available that can be called on to clean up a spill in Delaware Bay.

When you get to sea, there is basically no contingency plans for at-sea spills. And part of the inventory that would be used for that, it belongs to the United States Coast Guard and the United States Navy, salvage equipment that would be deployed to the scene.

Mr. CARPER. Has the grounding off the shores of Alaska, has that demonstrated the need for a contingency plan that would be enforced outside of the terminal?

Admiral YOST. It does. But probably Prince William Sound has the only contingency plan in the United States for a big bay or sgund area; and that was required by the State gf Alaska as a cofditign gf permit for the pipelife.

And so we are prbably in as good a shape in Prince William Sound as we would have been anyplace in the world. They at least had a contingency plan. How much of the equipmant was ready to go, and in what time frame, was a question between Alyeska and the State; and I do not think anybody is very satisfied with it.

Mr. CARPER. Is there some reason why we should not require the civil owners of ships in this case to have a broader plan?

Admiral YOST. Well, there is probably some good reason for not requiring each vessel to have a contingency plan. Let us say that we required every tanker to have an on-board high seas containment boom and methods of deploying it. Now, that is not a bad idea; but in practicality, that tanker is running with a very lean crew. If it was not, it would not be competitive.

Tankers throughout the world are very large, with very small crews. When you have a collision at sea, the crew is most concerned with keeping that vessel from sinking. It is way down on their priority to get some heavy seas boom off the ship, surrounding the spill, and start to clean it up. Even if they did that, the vessel is holed. It has got problems. It does not have any place to put oil that might be cleaned up. So it is just not a very good idea to require tankers to have boom and containment equipment, and skimmers, contingent as part of the tanker's operation. At least, it is an idea that is going to cost a lot of money and may not be practical in the long run.

There is not other entity on the high seas except the tanker. There is no terminal. There are no offices. There is no equipment. There are no docks. We are at sea. So I think that the way we are doing it, to provide strike teams from the U.S. Coast Guard to use the U.S. Navy's equipment, to the extent that they have it, is probably the best we are going to do. And maybe we need to look and see if there is enough of that, if it can get there fast enough, if we have done enough research to have state of the art and those kinds of things.

Mr. BUNNING. Thank you very much.

Mr. TAUZIN. The gentleman's time has expired. The Chairman recognizes Mr. Goss for a round of questions.

Mr. Goss. Thank you, Mr. Chairman. Mr. Secretary, I have got three questions. I think they are all easy; and I think we can do it in less than five minutes.

The first one. The fifth point you made in terms of the differences—in your written remarks—between what we are discussing here under 1465 and what your Administration proposal is, improved enforcement authority under the Clean Water Act.

Could you elaborate briefly on what that consists of?

Secretary SKINNER. Well, the President, under what we have proposed, can order removal actions to avoid further pollution threats. We have higher civil penalties and court-imposed injunctive relief. So the President can actually go to court and take actions concerning pollution threats that right now we do not have under existing law.

Mr. Goss. These then primarily are involved in what I will call courtroom or paper-procedures, as opposed to equipment or hardware?

Secretary SKINNER. Yes. They give more administrative authority and legal authority to take action.

Mr. Goss. The second question goes to the Protocol question that my colleague, Mr. Carper, raised, and I want to be reasonably sure I understood the answer. And I understand it is tricky sailing. But would anything in the proposal that you are presenting impair a State's ability, or a State's present capability, to deal with vessels in innocent passage that discharge. And I am particularly here thinking of the Florida Straits, where we have this problem rather regularly.

Secretary SKANNER. I do not think so. But let me do this. I have just asked my staff to prepare about five or six different scenarios on the Protocols and how it will work; and we will share those with all Members of the Committee in the next day or so.

I will put that as one of the scenarios. I think if we assume fact situations and then take it through how the plaintiffs would recover in each of those cases and from whom, then we can visualize the situations. I know there are a number of questions from the Committee on this whole issue.

The answer is, I do not think it affects that; but I will put that as one of the scenarios, and we will answer that.

Mr. Goss. Thank you very much, sir. And the final one is, can anybody give me a seat-of-the-pants guess, or a ball-park, or any way you want, of what a regional response team costs, or what 11 regional response teams would cost. Is there a number?

Admiral YOST. I think we can give you that and better in writing. I would say each response team—the critical mass—is about 40 people. So you can multiply 40 times average salary of about 25,000 a year. Coast Guardsmen are not paid very well. And then you have probably got several million dollars worth of capital, equipment, that would be a one-time cost.

Secretary SKINNER. But it would have to be maintained and replaced.

Mr. Goss. Yes, plus operations.

Admiral YOST. Plus operating costs for each strike team, let us say $5-or-$6 million a year for operating costs.

Mr. Goss. I think that information would be useful to have.

Admiral YOST. We will provide that in writing in some detail, and somewhat more accurate than I have given it, sir.

Mr. Goss. Thank you very much. That completes my questions. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman. The Chairman would, in fact, request that as soon as possible—as we are in the drafting stages now, Mr. Commandant.

The Chairman now recognizes the gentleman from Maine, Mr. Brennan.

Mr. BRENNAN. Thank you very much, Mr. Chairman. My question is directed, I think, more at Admiral Yost. My sense is the best single thing Congress could do is pass some sort of legislation that would prevent a spill from taking place, whether that is requirements for masters and crew, or types of ships and the like.

But I am trying to get this one into perspective, here at Valdez. As I understand it, there were some 11 million gallons spilled. And I would like to know, first; how much you have recovered; and then secondly, how much would you have recovered had EXXON had, say, optimal equipment available and acted within reasonable time?

Admiral YOST. Well, let me give you my best professional guess. Based on the weather conditions as they happened in Valdez, the vessel put out that 11 million gallons probably in the first four hours. That came out, I think, to about 700 gallons a second was coming out of that ship.

The response was supposed to be enough boom to contain it within about five hours. So at that point in time, they should have had several thousand feet of boom; maybe as much as 10,000 feet of heavy sea boom to contain it. What did arrive, arrived in more like 12 or 13 hours. It was a boom that was not heavy sea boom, and not a boom that would withstand a lot of weather.

There was some booming done at that time; and early on Day 3, a 70-knot gale blew up, blew the roof the tower in Valdez, amongst other things. But blew that boom and all the oil away that had been boomed; and people that were there said the oil was moving like a freight train down Prince William Sound; boom, oil and everything.

So however much we would like to say that had only Alyeska done their job like they should have done it, it is probable that, had everything gone perfectly, that Mother Nature would have spoiled the whole thing, and we would not be in much different shape than we are today.

Mr. BRENNAN. So that is basically, really, it might not have made much of a great difference what their equipment was?

Admiral YOST. No, I do not think it would have made a material difference; but probably we would have all felt a lot better, had we all seen the thing done right, in accordance with the numbers. Now, we have picked up about 15 percent of the oil spilled. And I would say to you in major spills throughout the country and over time, it has been my experience that you pick up between 15-and-19 percent of the oil spilled with skimmers, et cetera; and that is about what we have done here.

Of the remainder, about—it is a guess—20, 25, maybe 30-percent, has evaporated—the high ends—the volatile ends, leaving a very tarry, hard-to-handle substance that has very little toxins in it; and most of it is now on the beach; which again happens in almost every major oil spill. A great majority of the oil ends up on the beach. It is the ultimate boom. Everything else that we do is puny and not necessarily effective.

We end up with a beach clean-up, which is very difficult, protracted, messy and the damage is significant.

Mr. BRENNAN. So do I understand it correctly, the net result, whether EXXON acted quickly, had equipment, acted with dispatch, would have made very little difference in the *Valdez* spill?

Admiral YOST. That would be my professional guess. And I would say maybe we are talking about a difference of picking up, instead of 15 or 16 percent, 18 or 19, or 20-percent. We are in that kind of 4 or 5-percent range by history.

Now, if we had had a high-seas boom, it had been deployed; we had decent weather; we had gotten plenty of skimmers out there, this thing could have been turned around. Maybe we would have had 40 or 50-percent pickup. So I am not saying it could not have been done. It just could not have been done with the Alyeska oil spill plan and the equipment that they had in place.

Secretary SKINNER. Let me just add on that, I had been there shortly afterwards and again. I think we have got to focus on the fact that this spill is extraordinary, and that many of the spills that we are talking about dealing with in contingency plans are smaller and can be contained.

Having been up there and talked to everybody, I am not optimistic that a spill of this magnitude, in that environment, could have been contained with any level of technology we have available today. And you know, that is just talking to the experts.

We have learned more about spill containment and dealing with spills in the last month in Alaska than we have learned in the last, in my opinion, 10 years in other parts of the country. It is such an extraordinary event, of such magnitude, that a contingency plan to deal with just that kind of spill— I do not think we have got the ability or technique. We have got to contain it; but it will not deal with it in any real effective way.

Do you disagree with that?

Admiral YOST. No.

Secretary SKINNER. I just do not want to leave the impression that we can prevent a spill of this magnitude by having a contingent team up there in place. The effort would be astronomical; and that is why the clean-up is so important.

Mr. BRENNAN. Is that essentially true for the entire United States coast?

Admiral YOST. It has been historically, with the major spills we had. I was in charge of the BURMA AGATE (sic.), which was 14 million gallons in the Gulf of Mexico, the IXTOC ONE Mexican spill that came on the Texas coast. Those have been the percentages.

I am not saying it cannot be done better. But it cannot be done better without some orders of magnitude increased in the preparation and the spending to have it done better. And that is a decision we need to make well above my pay grade.

Secretary SKINNER. Not well above; but above.

[Laughter.]

Mr. TAUZIN. Well above, I am told. Thank you, Mr. Brennan. We have some guest from the Full Committee I am going to recognize in just a minute; but I wanted to make a couple of points, Mr. Secretary.

One is that Prince William Sound and *Valdez* had a VCS system operating. Now obviously, it was imperfect. It did not catch this

tanker off-course. But we recently shut down the VCS systems in New York and in New Orleans, the number one and two ports in this country. And the former Chairman, Mr. Studds, read from a Coast Guard report indicating that while oil is awful, and the damage it did in Prince William Sound is incredible, that it pales in comparison to what might occur if we had a major collision in one of those harbors of vessels containing extraordinarily more dangerous substances that could become airborne and do incalculable damage, not simply to the environment but to human life in these crowded cities, New York and New Orleans.

VCS systems have been eliminated in both those communities. I know the Budget Committee of the House has recommended they be reinstated, and then recommended there would be no money to reinstate them.

What are we going to do about it, Mr. Secretary? Can we permit those communities to continue to operate under a system—if I can make an analogy—that would be akin to the tower at Washington National shutting down, and advising pilots, "You can take off when you want; land when you want. Please do not hit each other, fellahs?"

Mr. Young commented that that may have happened already, we are not sure.

Secretary SKINNER. Well, first of all, we are not going to shut down the National tower; so let's start there. The President has directed and we have prepared what I call a multi-point program to deal with all aspects of the spill. Not only the clean-up, but all of the things like this legislation; like yesterday, the increased effort by EXXON, and a number of other programs.

One of the programs in the President's plan is to examine in depth the idea of radar control in key areas, and look at ways to implement it. So I can assure you that it is on our program and the Administration's program to look at that. We are directed by him to report back shortly on that. And until that report is prepared and the costs are put on it, and the recommendations of the Coast Guard have been received, I cannot answer what we are going to do. I can tell you, Mr. Chairman, we are looking at it and it is part of our program.

Mr. TAUZIN. I can only add that lives are at stake; and that every day we delay puttifg in some sort of Vessel Control System in these crowded harbors, crowded ports, with incredibly dangerous substances being transported, every day we delay we risk the worst.

Secondly, I understand there are very little contingency plans, either drafted or in place, to deal with any such emergency, should such collisions occur. And I would also call that to your Department's attention, as we are seriously looking at that awful problem as well.

If contingency planning in Prince William Sound was inadequate, and we have none at all in these harbors with no VCS, and substances that can kill when they become airborne—passing each other in the night in the currents of the river, which change and dramatically shift, without any controls at all—I do not have to overdramatize the problem to, I hope, excite everyone's interest in solving it as rapidly as we can.

Secondly, Commandant, we have another suggestion that this Committee may want to look at in this bill that I want you to address quickly; and Mr. Secretary, I think it involves organization of the Coast Guard, and so you may wish to comment.

There has been some suggestion that the commander-on-site in a given area may not have any expertise in handling an oil spill, may not know much about it at all. But it might be better to have in your organizational structure a separate section with, indeed, someone of authority that can move into an area where there has been a major disaster, and supersede the commander-on-site in, in fact, executing the contingency plan.

Would you like to comment on that suggestion; and would you perhaps consider it at all in reorganizing to deal with these kinds of incidents?

Admiral YOST. We certainly would; and we will consider it. My only plea is one that I will make directly to my Secretary; that he does not use me to send to every oil spill in the United States. We have 5,700 a year; and I have spent an inordinate amount of time in Alaska, and intend to spend a lot more time in Alaska. But I cannot cover all 5,700. I would have to have some help in doing it.

Secretary SKINNER. And I would only comment that the President, having great confidence in Admiral Yost and his experience in clean-ups, selected him to be the on-site coordinator because of that experience, and because it was a major disaster. So I think the President picked the right man. To the degree that I had any help in recommending him, I am proud of it.

Mr. TAUZIN. I happen to concur in that whole recommendation; but we are concerned about, indeed, future ones.

Secretary SKINNER. I think that is a good point.

Mr. TAUZIN. I would appreciate if you would look at that suggestion; and perhaps come back to us with your thoughts on it.

I am happy to recognize several guests of the Full Committee, with the knowledge that the Secretary has an appointment with some Senators who want to see him very quickly. So we will try to go quickly.

Secretary SKINNER. Yes, they have waited long and patiently; and I do not want to run——

Mr. TAUZIN. I will first call upon, again in shifting order, Mr. Saxton.

Mr. SAXTON. Thank you, Mr. Chairman.

Secretary Skinner, Admiral Yost, Mr. Hoyle, thank you for extending your stay with us. Of course, there is a great deal of interest and, frankly, Mr. Chairman, I am encouraged by what I have seen and heard here in the Subcommittee this morning, not only because there seems to be a good agreement with regard to the bill that we are here to discuss, but also because there have been a number of questions and a great deal of interest shown in the possibility of going beyond this bill with regard to contingency planning and how we can better manage oil spills, should they occur in the future.

I found it interesting to note, as Congressman Studds pointed out early on, that the ability of the Coast Guard nationwide to deal with spills is very, very limited, and I was interested further to listen to Mr. Hughes and Mr. Carper who indicated, through their

questioning, interest in how we might better get ready for future oil spills.

Given the fact that the Coast Guard has limited capacity, given the fact also that, from what I have learned during the past few weeks, oil companies have plans of one sort or another. Perhaps the most sophisticated plan was in Alaska. It didn't work very well, for various reasons, including climatic reasons and perhaps lack of adequate planning, but there was a plan in place there.

I am also told that in the Delaware River there are plans of some sort there, and I have a suggestion which I would put to you in the form of a question. Given the fact that the Coast Guard has such a variety, a wide variety of responsibilities, and a limited amount of resources to carry out those responsibilities, no real hope of getting large amounts of additional monies to carry out further responsibilities in terms of oil spills, cleanup of a significant amount, how would you react if we said that the industry ought to be primarily responsible for the cleanup of oil spills, perhaps as they currently are in Alaska, that oil companies establish reasonable response teams which would perhaps be supervised by the Coast Guard or by the Department of Transportation, that the response teams be capable of responding to oil spills in a timely fashion, within some given number of hours, that federally approved emergency training be carried out for the response teams to become capable of professionally knowing how to deal with oil spills, and each team be subject to perhaps drill so that we don't have to deal and look at the situation as we are in Alaska, with the cleanup in the first few hours and days, of experimentation being carried out on the spot, with the oil company and volunteers, I suppose, experimenting with ways to clean up?

How would you react to a privately funded, privately carried out oil response such as that, Mr. Secretary and Admiral?

Secretary SKINNER. Well, first of all, the President, as part of his program, has asked for a total reassessment of the response mechanisms, so I wouldn't want to prejudge that effort that is ongoing.

Number two, on a localized basis, the response team in Alyeska, in Alaska, was supposed to be an industry-sponsored team, they were supposed to be responsible and yet they basically had a zero plan, and on a 1 to 10, that plan was about a zero. So, what we have seen so far, the industry's ability to manage and staff such a program has not gotten reviews on Broadway, to say the least.

I would suggest that we ought to wait and see. I think industry has the responsibility for the cleanup, they have the basic responsibility on a localized basis, working with State, local and Federal officials in developing a plan that is particularized to the area in question, and then we have got to hold them to that responsibility.

But to set up national private corporations that are national response teams that would go in on an individual basis, that is something we will look at, but I am not sure it is workable. It sounds pretty good, but I am not so sure, when the implementation came, that it would work as effectively. It is a privatization of spill, and you would always have to have the back-up of the Federal Government to make sure that, if the industry failed, we had a mechanism to go into a place and do it.

Adm. YOST. I would support that as well. Such equipment as C-130's, air-droppable heavy equipment, air-deliverable, is not likely to be put together by an industry response team. It would have to be something located by an airport, on watch, et cetera. I wouldn't undersell the Coast Guard strike team capability. It is a very, very important capability and a significant capability. It is asked and does deploy to foreign countries on a routine basis any time there is a major spill anywhere in the world, that strike team is in the air within hours.

So, it is only the question, do we want more of it and more strike teams, I think is the better question, sir.

Mr. TAUZIN. The gentleman's time has expired.

Mr. SAXTON. Thank you.

Mr. TAUZIN. I will now recognize the gentlelady from the State of Washington, Ms. Unsoeld.

Ms. UNSOELD. Thank you very much, Mr. Chairman, and thank you for staying.

As we try to worry our way through this preemption issue, I think maybe we ought to look at some of the underlying reasons that I feel that some of the States want to hang onto their ability. One, prevention is certainly better than clean-up, and that when the polluter has to pay, it tends to shape up their procedures.

We have listened to a discussion up here as to how do you actually make Exxon pay enough so that they feel it in their pocketbook and are going to be able to change their ways.

Now, currently it is about $400 million probably worth of insurance that the entity and the oil industry would have, so that a spill that comes up close to that, the insurance company is going to be pushing them to improve their safety practices.

Now, if we have in this bill a maximum liability of $75 million, then the insurance industry isn't going to have a lot of incentive to change the practices, and if there is an ease to draw then upon a pool, do you feel there is going to be enough incentive, Mr. Secretary, to get the industry to exercise all that is in its power to prevent these kinds of spills?

Secretary SKINNER. Well, let me says that, first of all, the Protocols to some degree affect our ability. It is important that we come to closure on the Protocol issue, because it has been around too long, our national credibility in the area of maritime Protocols is involved here, and, number two, we have no way of perfecting judgment against foreign shippers or tankers or anything else under existing law that is anywhere close to being effective. The Protocols go a long way to doing that.

The compromise to that, in my opinion—and you raise a very good point—obviously, the companies that carry insurance, and they are all going to have to carry it, their rates are going to go up as a result of this incident; number two, the programs are so sophisticated today with insurance companies, that they are almost incident-rated. I mean the company is going to be incident rated-based on this, and I would guess Exxon's premium is going to go up significantly as a result of this incident, and it will also have a ripple effect on the industry as a whole, and also because the insurance companies don't want to pay out this kind of money, especially at this level, they are going to be policing the companies to

make sure that they do things so that we don't have, you know, the kind of people operating that shouldn't be operating and things like that.

Putting all of that aside, it appears to me that we ought to have a policing mechanism on industry contingency plans, as well as the other things that the administration is talking about putting forth to the Congress, so that we keep a constant pressure on them. You can't expect the companies to self-police them. You know, we have got to have a mechanism in place to do it, so hopefully this legislation will draw it.

It is not ideal and, you know, we might reach caps significantly different, but I can assure you, having been to Europe two weeks ago, negotiating with five different governments on the issue of what steps we can take to increase our anti-terrorism program, it is a long, arduous process that requires compromise, and I think the Protocols, which have been supported by the Senate and House for several years now, are a good first step, but we still have to keep the pressure on. I think that is an excellent point.

Ms. UNSOELD. I will follow up with a written question on that, but I would like to——

Secretary SKINNER. OK. If I thought you were going to really get into preemption, I would not have stayed.

[Laughter.]

Ms. UNSOELD. That is why I don't want to get into the point, because I have a couple of other questions. The State has liability claims under existing laws for hazardous materials spills. All right, if oil is covered under this Federal proposal, what happens when an oil tanker carrying hazardous material and a tug collide?

Secretary SKINNER. We will make that one of our scenarios that we are going to get back to the Committee.

Ms. UNSOELD. OK.

Secretary SKINNER. I think on this preemption issue, it is so complicated and it is obviously so important to the Committee, and it is also so important to me, I want to understand it better, that these now seven different scenarios will cover that, because if you had two, which could happen, two collide with different liabilities, all I know is the lawyers would do very well.

[Laughter.]

Ms. UNSOELD. Now, H.R. 1465 covers spills from land-based facilities, and we don't want to have double assessments. But what about damages to groundwater, so that if you have the States wanting to come in and protect their groundwater, how is that also going to be affected?

Secretary SKINNER. We will answer that question as well. I don't know how groundwater is affected. These are good questions.

Ms. UNSOELD. The last one—and this one, I am sure, would require greater time to go into—currently, we have multiple damage assessments by different agencies that could be done, NOAA, EPA, Interior, and the State might all be trying to assess resource damages.

Now, your bill states that there shall be no double recovery for a number of things, including damage assessments. Now, how then are we going to sort this out, if you have multiple States, multiple third parties, maybe counties that have been damaged and that

there are natural resource assessments and also independent third parties?

Secretary SKINNER. We will try to get you the answer to those questions.

Ms. UNSOELD. Thank you very much, Mr. Secretary.

Mr. TAUZIN. Thank you so much, Ms. Unsoeld.

The reason we invited her is she raises the credibility of——

Secretary SKINNER. Yes, I was wondering what she was doing, writing these notes and going through this legislation. She should be working for me.

[Laughter.]

Mr. TAUZIN. Mr. Secretary, thank ykq so iqch, Ir. Hoyla, Admiral Yost, we appreciate your testimony. I know you have a busy schedule today. Thank you very much.

Secretary SKINNER. Thank you.

Mr. TAUZIN. The next panel will consist of oil transportation industry representatives and, as the first panel leaves the room, I will ask you to begin to assemble at the table. They will include:

Mr. Jerry Aspland, President, ARCO Marine, Inc., Member of the Marine Transportation Committee, representing the American Petroleum Institute; Mr. Austin P. Olney, Partner with LeBeouf, Lamb, Leiby and MacRae, representing the American Waterway Operators; Mr. Thomas P. James, General Counsel, Louisiana Offshore Oil Port; and Mr. Ernest C. Baynard III, Trans Alaska Pipeline Liability Fund.

Would you gentlemen please take your places and we will begin with Mr. Jerry Aspland, President of ARCO Marine, Inc.

All of you who have been in attendance this morning know this is a small committee room. Your attention and the fact that quiet has been maintained so well in the room is deeply appreciated. We will ask you to continue that for the rest of these hearings. As we assemble this second panel, we will begin as soon as we can with Mr. Jerry Aspland.

Would you commence, Mr. Aspland?

STATEMENT OF JERRY A. ASPLAND, PRESIDENT, ARCO MARINE, INC., MEMBER OF MARINE TRANSPORTATION COMMITTEE, REPRESENTING THE AMERICAN PETROLEUM INSTITUTE

Mr. ASPLAND. Good morning. My name is Jerry Aspland, and I am the President of ARCO Marine, Inc., and I am here today representifg the Aeerican Petroleum Institute.

I welcoee thas oppgrtunaty to coement of the proposed Comprehensive Oil Pgldutign Laability afd Coepensataon Act, H.R& 1465.

Over the past 15 years, API has strongly favored and vigorously advocate a comprehensive approach providing the financial resources and response capabilities needed to deal immediately with any oil spill from any source in any U.S. navigable waters. We have repeatedly expressed to this Subcommittee and to the full Merchant Marine and Fisheries Committee our support for fair and comprehensive Federal legislation covering oil spill liability and compensation. The extremely tragic oil spill in Alaska's Prince William Sound underscores the need to move ahead with such legislation without further delay.

We want to assure you at the outset, Mr. Chairman, that API stands ready to provide all the assistance we can to your Subcommittee to achieve this objective and to establish a single Federal regime that will eliminate the overlaps, conflicts and deficiencies of existing oil spill compensation and liability arrangements. API believes that sound legislation can and should be enacted this year and that we should proceed accordingly.

The fundamental premise of the oil spill and compensation liability arrangements should be that all legitimate claims must be paid, and all claimants who have incurred actual losses must be compensated to the full extent of those losses. Therefore, API believes comprehensive Federal oil spill liability and compensation legislation should incorporate four fundamental principles:

First, the spiller should be "on the front line," responsible for removal costs and damages directly resulting from the spill, up to the applicable liability limit.

Second, a reasonably sized fund should be created through contributions from companies that handle oil to supplement the cost of removal and compensation for direct damages over and above the liability of the spiller.

Third, all oil spill removal costs, economic losses directly resulting from the discharge and actual costs incurred to restore or replace environmental losses should be compensated.

Fourth, the comprehensive Federal regime should be the only liability system for a discharge of oil into the marine environment.

H.R. 1465 incorporates the first two of these principles. The remainder of our statement will discuss how H.R. 1465 can be improved to reflect the remaining two principles.

Scope of damages: API supports legislation making the responsible party liable for removal costs and for all direct and actually identifiable economic damages. These would include loss of revenue for directly impacted businesses and costs actually incurred by the Federal or State governments in restoring or replacing damaged natural resources, as well as the costs of studies or plans to restore or replace such damaged natural resources.

The fund created by the legislation should be drawn upon to pay for cleanup costs and proven damages after insurance coverage has been exhausted. However, the fund should not pay for speculative damages.

Since claims for indirect or speculative damages could not be challenged, and could quickly diminish the fund's reserves, API opposes provisions to compensation the Federal or State governments, as trustees of natural resources. The bill provides for such compensation for resource damage where no actual replacement or restoration is involved. Such claims for indirect or speculative damages, which could be asserted employing arbitrary procedures, could not be challenged by the vessel owner or by the federally created fund, nor would they be subjected to meaningful judicial review. This open-ended legal burden can be avoided by limiting claims to direct and actually identifiable natural resource damages.

A need for a single, comprehensive fund: API has consistently stressed the need to establish a single, comprehensive fund to supplement the liability of the responsible party and to replace the existing patchwork of State and Federal liability laws and funds.

This bill would not preclude other actions under State law, admiralty law, or common law to recover damages. In this sense, it is open-ended and provides no protection against such legal actions. Accordingly, it is essential that this legislation specify that an action may only be brought for removal costs, damages or other relief resulting from the discharge of oil, except as provided in this Act.

API agrees that individual States should be able to maintain funds for purposes other than compensation for removal costs and damages resulting from a federally covered discharge. States may need to maintain funds to pay for training, research and equipment purchases and for cleanup and removal of land spills. However, any State program financed through the fund must be fully coordinated with and in support of the National Contingency Plan.

In conclusion, API supports comprehensive oil-spill legislation which will bring under a single umbrella all aspects of oil-spill liability and compensation to ensure that all legitimate claims are paid, and all claimants who have incurred actual losses are compensated to the full extent of those losses. This legislation is long overdue.

It is essential, however, that any such legislation clearly define the liability of each shipowner and facility owner, as well as circumscribing the scope of all claims which can be made on the responsible party and on the fund. Compensable claims should be limited to oil spill removal and damage costs directly resulting from the discharge, proven economic losses, and costs actually incurred to restore or replace environmental losses.

Just as importantly, ship owners and facility owners need to operate under a single set of rules and not be subject to the laws and regulations of a variety of jurisdictions. A uniform, comprehensive regime will enable a responsible party to know his legal status and responsibilities in the event of a serious oil spill.

I will try and answer any questions you may have. Thank you.

[The statement of Mr. Aspland can be found at the end of the hearing.]

Mr. TAUZIN. Thank you, Mr. Aspland.

I will remind the remainder of the panel that your written statements are all a part of the record of these proceedings, and if you can, summarize for us within the five minute rule.

We now welcome Mr. Olney, Partner with LeBeouf, Lamb, Leiby and MacRae, representing the American Waterways Operators.

STATEMENT OF AUSTIN P. OLNEY, PARTNER WITH LE BEOUF, LAMB, LEIBY AND MAC RAE, REPRESENTING THE AMERICAN WATERWAYS OPERATORS

Mr. OLNEY. Thank you very much, Mr. Chairman.

The statement which was just given by API is very much in concert with the full statement that AWO would like to submit for the record, and therefore, in the interest of time, I would like to bypass some of the usual introductory remarks on this legislation and go straight to the heart of two issues that we think are very important.

I think that the *Exxon Valdez* spill has certainly validated the approach that this Committee has wanted to take for the last 15 years, in putting into one place all the laws that relate to the recovery of damages and removal costs from an oil spill.

I think it is pretty clear that fundamental design of this legislation is sound and it would have improved the ability to respond to the claims that are going to fall out of the *Exxon Valdez*, which is inevitably going to evolve into I think a lot of litigation at the State level and the Federal level and involve the application of several different laws simultaneously.

We support, therefore, the basic elements of this legislation, but we do recommend that there be refinements in two areas, the first one being preemption. There was a substantial amount of discussion today on preemption, but I do think that further points need to be made.

Preemption is really important, for two reasons. The first one I think is quite obvious, and that is that in a situation like the *Valdez* spill, the application of several different laws at the same time causes a lot of confusion, a lot of conflict, and is likely to cause the type of litigation that will only bog down the resolution of claims, and that is in no one's interests, not in the claimants' interest or in the defendants' interests. Therefore, we support preemption on the basis that if you are going to have a truly comprehensive law, that law ought to rest in one statute, in the Federal statute.

We see that there are 24 States that have their own laws. They are similar to the Federal bill in many respects, but they use different terminology. They create the types of opportunities for semantic differences that are likely to cause unnecessary legal debate. Therefore, the first and primary role of preemption is to eliminate the confusion that inevitably falls out of the application of different laws at the State level and the Federal level.

The second reason for preemption is a subtler point, and one that I don't think is particularly well understood. The limitations of liability that are contained in the Federal bill, that are fundamental to the Federal bill, are not mirrored in most of the State statutes. That is to say that most of the State statutes do not recognize the limitation of liability for the vessel owner.

The limitation of liability in the Federal bill is not a limitation on recovery, and that is an absolutely essential point to understand. The limitation of liability in the Federal bill is a device to insure that the responsibility for paying for claims that exceed certain amounts are borne by both the ship owner and by the cargo interests. We think that that is sound public policy, because it enables the risk of that enterprise to be borne in catastrophes by both the ship owner and by the cargo interests.

If you do not preempt State law, you permit another legal regime to exist which doesn't recognize that principle. In other words, if you had a system of Federal law without preemption, with limitation, and a State system without limitation, you would always have State law and Federal law claim simultaneously, with the State law wrapping around the limits that are contained in the Federal law, and in effect un-doing what you attempt to accomplish by the establishment of a limitation in the Federal legislation. We think

this is fundamental to the design of this legislation, and the absence of complete preemption, in effect, does violence to the fundamental design of the bill.

The House bill does contain a measure of preemption. It is not complete preemption, it is partial preemption, and in our book, partial preemption is not effective. In order to make the system of allocating the risk between cargo interests and vessel interests, you need to have preemption of the State law.

I do not think that there is any disadvantage to State claimants by preempting these State laws. The Federal bill is a complete statement of damages that are generally recognized in common law and in State law and in Federal law and, as such, I think the Federal law should represent the complete compendium of damages, and it is unnecessary to have a duplicate system of laws that may use different terminology, but essentially tries to accomplish the same thing.

The second point where we would like to recommend some refinements is in the area of damages. I think that in the spill that is as large as the *Exxon Valdez*, which may be comparable in complexity to the AMOCO Cadiz case, the fundamental problem is literally the administration of justice in the processing of these claims.

I think you want to make for the courts, who are likely to apply this law, very clear principles. I think that the recent decision in the AMOCO Cadiz case, Judge McGarr uses some very understandable, simple principles for the application of economic damages, and that is that if you are going to recognize a claim in this situation, the claim should essentially have a substantial causal relationship to the incident.

We fear that the way the language is currently drafted in H.R. 1453, is that there is an opportunity or an invitation for claims that are remote and speculative. This is a narrow legal area and we would like to work with the staff in refining that language so that it will be clearer to those who apply this law, just what the standards are, to make sure that the process does not get bogged down, as it did in the AMOCO Cadiz case, with claims that are remote and speculative. Bogging down the system does nothing to advance the interests of legitimate claimants, and it doesn't help the defendants either in sorting out legitimate claims from the speculative claims.

The second area of damages, which is quite complicated, is the area of natural resource damage. AWO has long supported the concept that, in addition to paying for removal and cleanup costs, the industry should be responsible for natural resource damages, to restore, rehabilitate, and replace injured natural resources.

We see a problem in H.R. 1465, in that it recognizes damages in excess of those types of damages. In other words, if it can't be restored, rehabilitated, or replaced, an additional assessment will be made.

The bill borrows a chapter from CERCLA and references the natural resource damage assessment regulations from CERCLA, which are complicated and, frankly, have only been applied in a handful of situations.

It is clear to us from reviewing the regulations, and reviewing circumstances where those regulations have been applied, that you are using a very complicated system of attempting to ascribe economic value to those resources which do not have economic value, by the use of proxies.

The use of these mathematical models and the use of rather subjective judgments has the potential of creating some very, very large numbers. The effect of this is to create a penalty, or a new penalty in the name of damages. We don't think that this is sound policy because you really create no incentive for the discharger to go the extra mile in rehabilitating, restoring or replacing natural resources. Because once having completed that process, there is then this additional penalty which is going to be calculated on the basis of a rather subjective process. And that calculation in this legislation is entitled to presumptive validity in a court of law or an administrative process.

We think that there are better ways to accomplish what I think the committee is trying to accomplish; namely, to see that the resource is truly cleaned up. We think this provides a disincentive, and if in fact it is really a penalty, let's call it a penalty and do away with the middle man.

At this point I would like to conclude my statement, and agree to answer any questions that you might have. Thank you very much.

Mr. TAUZIN. Thank you.

[The statement of Mr. Olney can be found at the end of the hearing.]

Mr. TAUZIN. Mr. James?

STATEMENT OF THOMAS P. JAMES, GENERAL COUNSEL, LOUISIANA OFFSHORE OIL PORT

Mr. JAMES. Thank you. My name is Tom James. I am General Counsel of LOOP Inc.

LOOP owns and operates the Louisiana Offshore Oil Port, the only deepwater port licensed by the United States Department of Transportation pursuant to the Deepwater Port Act. That law originated in this committee and was enacted in 1974. We off-load crude oil from large tankers at our terminal 18 miles off the Louisiana coast in the Gulf of Mexico, beyond the limits of the United States territorial waters.

Our throughput volume of approximately 750,000 barrels a day is approximately 15 percent of the crude oil imported into this country. We are not, however, operating close to our design level of 1.4 million barrels per day.

LOOP's offshore terminal and pipeline operations are subject to detailed safety regulations under the Deepwater Port Act as implemented in Coast Guard regulations. We are also subject to extensive environmental protection provisions contained in our license.

LOOP is a facility that minimizes oil spill risks associated with crude oil transportation by among other things reducing the number of tankers calling at inland ports, and we maximize the ability to respond to spills if they do occur by maintaining oil spill response equipment both offshore and onshore.

This committee recognized deepwater ports as an environmentally preferable method of bringing crude oil into the country when it drafted and reported out the Deepwater Port Act in 1974. Your foresight has proven correct since we commenced operations in 1981. LOOP's president, R. C. Thompson, presented testimony yesterday to the Senate Commerce Committee on our record and the spill prevention and response measures we are carrying out. Copies of his testimony will be made available to you.

We ask that when the committee considers legislation like H.R. 1465, which will impact the economics of transportation of oil by tankers and by LOOP, it needs to consider whether that legislation will provide incentives or disincentives towards the use of deepwater ports.

The points we want to address today are the liability fund, the need to consider the relative risks of using deepwater ports or other transportation modes, and the lack of enforceability of the liability requirements for some vessels in the Exclusive Economic Zone.

We support one common liability fund and the concept that persons who contributed to the Deepwater Port Liability Fund will be given credit in the new fund for those payments. We question whether a $500 million fund is appropriate or sensible, however.

We feel that required response costs in excess of a more reasonable fund could be borrowed from the Treasury if the need arises. Under the Deepwater Port Liability Act, procedures are in place where the Deepwater Port Liability Fund manager can borrow funds from the Treasury in a minimum amount of time. Similar procedures could be implemented under H.R. 1465.

Any funds that might be borrowed could be recovered, or could be repaid by recovery from responsible parties and by the reimposition of fees.

We also feel that limitations should be placed on the purposes for which the fund is used. The Deepwater Port Liability Fund was reduced by $6.5 million in 1986 and 1987 and those funds were used for purposes unrelated to LOOP or oil spills. The contributions to the new fund should be available only for direct oil spill clean-up costs and damages.

Secondly, the bill provides a procedure where the Secretary can reduce the liability limits for deepwater ports, thereby recognizing the more environmentally protective deepwater port transportation system. We think the Secretary should also be given authority to review the relative risks of deepwater ports versus alternative transportation modes and adjust fees, liability limits and financial responsibility requirements as appropriate.

Our last point is the bill's liability and financial responsibility provisions are enforceable only against vessels calling at deepwater ports and vessels that enter the territorial waters. Vessels that otherwise discharge their cargo in the Exclusive Economic Zone are not subject to enforcement of liability nor the financial responsibility requirements under the Act.

For example, if a tanker elects to lighter outside the territorial waters but inside the Exclusive Economic Zone, the bill makes the vessel liable in case of a spill but provides no method for enforcement and does not require demonstration of financial responsibility

unless and until the International Convention on Oil Spill Liability is ratified by the Senate or other provisions are added to assure comparable enforcement.

The point we want to make is that lack of enforcement provisions and requirements for financial responsibility demonstrations for tankers outside the territorial waters acts as a deterrent to deepwater port use and may permit certain offshore operations to avoid the costs attendant to liability and financial responsibility. This disincentive to the use of deepwater ports should be changed.

In closing, we ask that you review H.R. 1465 in detail to consider whether you are creating a disincentive to use deepwater ports, a type of facility this committee has felt in the past is an environmentally sound way of transporting crude oil.

Thank you.

Mr. TAUZIN. Thank you, Mr. James. Representing the area from which the Nation has its only deepwater port, I can sympathize a great deal with your testimony today.

[The statement of Mr. James can be found at the end of the hearing.]

Mr. TAUZIN. Also, I would like to welcome Mr. Ernest Baynard, the Trans Alaska Pipeline Liability Fund representative.

STATEMENT OF ERNEST C. BAYNARD III, TRANS ALASKA PIPELINE LIABILITY FUND

Mr. BAYNARD. Thank you very much, Mr. Chairman.

If it is all right with you, Mr. Chairman, I thought I would just sum up my testimony. It has all been included for the record.

Mr. TAUZIN. Please do.

Mr. BAYNARD. I have with me today also Ms. Rose Marie Carlisle. Both of us would be happy to answer any questions you all might have.

This committee, this subcommittee is well familiar with the origins and purposes of the Trans-Alaska Pipeline Liability Fund and I really don't need to get into an elaborate discussion of that. Some of that is contained in my testimony, which has been filed with the subcommittee.

I would simply like to make one point today, Mr. Chairman, and that is a point that is sometimes overlooked when we are discussing the funding of comprehensive oil spill liability funds, and that is that the Trans-Alaska Pipeline Liability Fund is a private corporation; and albeit it is chartered by Congress but this doesn't derogate from the private nature of the corporation, as the Supreme Court has held in other similar circumstances.

And that being the case, that would mean that the assets of the fund are not subject to simply being taken from the Fund and placed into a comprehensive fund, for that would be the kind of taking that is proscribed by the Fifth Amendment, which prohibits private property from being taken for public use without just compensation.

I am happy to note that section 201 of H.R. 1465 does contain a provision that recognizes this and seems to me to be a well drafted provision that takes into account the private nature of the Trans-Alaska Pipeline Liability Fund.

Regrettably, the legislation that the other body has before it, S. 686, does not contain such a provision. Indeed the provision in that bill is quite to the contrary, and indeed I think would, if enacted, result in a Fifth Amendment proscribed taking.

I think that it would indeed be unfortunate if after eight Congresses laboring on comprehensive oil spill liability and compensation legislation the final legislation were to contain a provision that was unconstitutional and that could possibly delay implementation of the entire legislative package. I don't think this is something that anybody wants to see. Certainly we wouldn't like to see that.

And I just would again commend the subcommittee for having included provisions in the House bill that do avoid this result.

Thank you very much, Mr. Chairman.

Mr. TAUZIN. Thank you, sir.

[The statement of Mr. Baynard can be found at the end of the hearing.]

Mr. TAUZIN. Let me quickly jump on that particular issue. How do you regard the proposal that was made by the Secretary of Transportation just today with reference to continuing the TAPS fund and allowing some sort of credit as the years go by to those companies who would be paying taxes, or the fees, the 1.3 cents per barrel on the major liability fund we are creating in this Act?

Mr. BAYNARD. I would like to have the opportunity, if I could, to take a look at that and maybe get back to you all on that. This is the first that I have heard of the administration proposal. I think it would be useful if maybe I could read it and study it a little bit and get back to you all on that, if that is all right.

Mr. TAUZIN. Of course. We don't want you to make any snap judgments. Of course the essence of the proposal is that it not be rebated. That it be kept for purposes of whatever cleanup is necessary, continuing liability in the Prince William Sound; and, secondly, that it be kept for additional spills in that area that may occur; and, third, the companies who have contributed to the fund will receive some sort of credit to their payments in the other fund.

I think that is it in toto. I don't think it is anything more complicated than that. Do you have any comments at all that you could give us? I would love to hear something from you on it.

Mr. BAYNARD. Well, I do think that I would like to look at the crediting mechanism. I guess the question I would have—I have a question. I don't necessarily have an answer. But the question I would have would be whether or not that is the equivalent of a rebate, and how effective would a crediting mechanism be?

Certainly the Trans-Alaska Pipeline Liability Fund continuing on to cover the same sort of risks that Congress thought it would take care of in 1973 when it created it are unobjectionable from anybody's viewpoint. But I would like to take a look at the crediting mechanism and just see how that works. That is the question I would have.

Mr. TAUZIN. Again, it sounds to us like what they are saying is that we will rebate to you but not in the form of an actual check, simply in the form of a credit against the taxes that would be caught in the other fund.

Would that meet your test of constitutionality under the Fifth Amendment?

Mr. BAYNARD. I am sorry, Mr. Chairman.

Mr. TAUZIN. Would that satisfy your opinion, the test of constitutionality under the Fifth Amendment?

Mr. BAYNARD. I am just not sure, Mr. Chairman. I would like to read it and see exactly how the crediting mechanism works. I would be happy to get back to you all on that, if that is agreeable.

Mr. TAUZIN. Yes. We will expect you to. Please.

Mr. BAYNARD. I would be pleased to.

Mr. TAUZIN. At some point.

Mr. Aspland, you have heard—you have been here for the first panel, I am sure, and you have heard the statements of a number of Members of this subcommittee to the effect that they would look very favorably upon amendments that provided some collection to establish these regional strike teams for the Coast Guard and to maintain them.

Does your association have any position on such a proposal?

Mr. ASPLAND. Well, I would like to start off first and say that API has formed a task force of eight company chairmen of the board to formulate a number of different plans. I do not know at this point in time what those plans are.

I can, though, speak for a minute as Atlantic Richfield, and Atlantic Richfield looks upon the development of regional strike teams as a positive action. One needs to be careful. U.S. Coast Guard teams helped us very, very nicely in 1985 in our oil spill in the Puget Sound. But they are not equipped to, as one might think, to come and corral large amounts of oil. They are very, very well equipped and very well trained in the technicalities of pumping oil and helping those that spilled it corral that or pick that oil up. But it is not a panacea to a quick, rapid response to stop oil from flowing all over.

Mr. TAUZIN. You also heard, I am sure, the chairman's suggestion earlier that perhaps the rate by which the Fund is filled might be accelerated in the earlier years and trimmed off again in the later years. Early filling of the authorized levels. And, secondly, that above those authorized levels that borrowing authority be actually established in the law as it is for the offshore, the port bill. And the fact that—if, in fact, those funds were depleted because of a spill, that the fill rate might be accelerated again by executive order.

Do you have any comments or positions with reference to those kinds of suggestions?

Mr. ASPLAND. I would say that those kind of suggestions, depending on the mechanism, would be acceptable to industry. We obviously know that if you drain down the funds at any one time, and then the next day you have another spill, we are right back in the soup. So I would believe that, again, depending on the structure of it, we could work within that kind of a regime.

Mr. TAUZIN. Mr. Olney, would you like to comment on either one of those last two propositions? That the Fund might, in fact, have a section that creates a contribution to the Coast Guard for the maintenance and equipping of these strike teams; and, secondly, the method by which the funds are filled might be accelerated

where there has been a depletion or in the years when, in fact, it is not filled to its authorized level?

Mr. OLNEY. AWO hasn't specifically considered these issues. I think that the latter seems to be a very good idea. I will take that as a personal opinion.

On the question of the uses of the Fund, this is obviously a more important issue for API as cargo interest than it is for AWO, which is principally comprised of vessel owners. I think just as a matter of public policy we have a little concern about going to the trouble to create a fund which is really designed to do one thing, and that is to make sure that funds are available to compensate victims of oil spills and to provide a ready access of funds for clean-up, and then to draw on that fund for other purposes.

That is my initial reaction to it, and if you would like a complete response from AWO, why don't we get back to you in writing.

Mr. TAUZIN. Might be a good idea. Keep in mind the suggestion is not to be used for other purposes, but it would be used for purposes directly related to cleaning up of the spill, and that is having a strike team available to minimize and, indeed, later cost of clean-up.

Mr. OLNEY. In effect, prefunding clean-up.

Mr. TAUZIN. Yes. Prefunding and, in effect, establishing as was recommended in earlier years the strike teams that can, in fact, deal with it in the first early hours when the spills might be contained and large-scale damage might be prevented. That is sort of preventive medicine, if you will, within the Fund, and a specific portion of the contribution dedicated to that rather than a specific portion of the funds held in reserve for other purposes.

Mr. OLNEY. As I said, it is probably easier for us to opine on that since we are not the ones who are directly paying for it.

Mr. TAUZIN. Yes, I understand.

Mr. James, you heard my question to Mr. Hoyle and also to the Transportation Secretary with reference to the Protocols and the point you have made today with reference to the lightering.

Do you have a suggestion as to how in this bill, absent adoption of the Protocols, we might deal with that problem?

Mr. JAMES. We think it is a complicated issue and that it needs some further study. However, there are lightering regulations where the smaller ship that lighters the crude oil from the larger tanker and calls at a U.S. port must certify to the Coast Guard that the larger ship meets certain Coast Guard requirements with respect to safety.

It may be that that the smaller ship could certify with respect to liability and financial responsibility requirements that the larger ship should meet.

Mr. TAUZIN. Would you recommend any differing liability limits on these lightering ships?

Mr. JAMES. Our concern there, Mr. Chairman, is that as H.R. 1465 is currently structured, the ships that call at LOOP will have a higher limit of liability and will have to demonstrate financial responsibility. It is difficult for us to say what limit of liability or what demonstration of financial responsibility the lighterer or the mothership should have. We just would like to be on a level playing field with him.

Our suggestion there is that, the Secretary is given the authority to look at the liability limits for deepwater ports and can adjust them. We are suggesting that the Secretary also be given the authority to look at the tankers that call at LOOP and be given the ability to adjust the fee, the liability limits or the financial responsibility requirements for those tankers coming to us.

We think that would be a way of judging the relative risks of using the deepwater port or other transportation modes.

Mr. TAUZIN. Well, as I look around me, I don't see any hands up to be recognized for questions.

One final thing, Mr. Aspland. We touched upon the borrowing authority that currently exist in one of the statutes. The Secretary of Transportation indicated that their concept was to allow the President the right to raise fund caps as a vehicle to adjust for the future, and to give borrowing authority but only under the fund caps.

What I suggested, if you recall, this morning was that perhaps what we ought to do instead is to authorize the President to adjust the percent, or the cent collections to replenish the Fund, number one; and, two, that the borrowing authority above the cap ought to be established as may be necessary in the case of a major spill.

Do you have any comments over which concept is preferable or would work better in the real world, where in fact we are experiencing such a major disaster now and the call is rather dramatic upon funds?

Mr. ASPLAND. No, I don't have any comment one or the other. But I just would like to repeat again that we do recognize that if you do have a major spill and there is a major call on the fund, that another spill can happen the next day and there needs to be some way to replenish the fund. And so I would defer that and then get back to you with a written answer.

Mr. TAUZIN. Well, thank you, gentlemen. Do you have a comment, Mr. Olney?

Mr. OLNEY. Could I just ask permission to provide for the record our reaction to the administration's proposal which we heard for the first time today on pre-emption. It sounds to me that we might have to rename this legislation the semi-comprehensive oil spill liability bill if, in fact, we are going to try to now have simultaneous application of international law or Federal law and State law.

Mr. TAUZIN. We will be receiving from the Secretary, as he pointed out, a set of scenarios that would apply to his pre-emption concepts in his bill. As we receive those scenarios, and they appear to be rather complex, I would very much appreciate, knowing how his preemption concepts, would be applied to those scenarios. Would you be willing, if you don't mind, to give us your interpretation of how those same scenarios would operate under the plan he has proposed.

Mr. OLNEY. We would be pleased to.

Mr. TAUZIN. As you know, the preemption thing has been the bugaboo that has held up this legislation from time immemorial with the Senate, and it is a critical one we should probably try to address here at the subcommittee level if we can resolve it. So I would address that to your attention as the most critical thing I

think we need to resolve if we are to get speedy enactment of the legislation.

Any further comments from any of you?

Mr. ASPLAND. I would just like to make one, Congressman, and that is in 1985 we had an oil spill, which was the largest oil spill of Alaska and North Slope crude oil up to that time, in the Puget Sound of the State of Washington.

Mr. TAUZIN. Yes.

Mr. ASPLAND. It might be well for the subcommittee to discuss with the State of Washington how they have handled and how they got funding and how they didn't get funding. Of course it was my company that spilled and one of my ships that ran aground, but we are very proud that in that whole thing we spent $13 million and had no litigation filed.

But there is a model for you to take a look at.

Mr. TAUZIN. I believe you settled almost all claims but five or six, is that correct?

Mr. ASPLAND. We settled all claims but five or six, and one of them we didn't settle was a claim for business interruption that was a gentleman that came in and said that he had a business interruption for a business that he had not started, and we asked him—you haven't heard the rest yet.

Mr. TAUZIN. Did it have anything to do with wind surfing?

Mr. ASPLAND. Yes, it did. He said his business was to teach the retirees of Squim Bay how to wind surf. Those are the kind of claims you can get that just come off from left field.

Mr. TAUZIN. Yes. I understand that. That claim sort of blew in and sort of blew out.

Mr. ASPLAND. That is right. But there is a good model. In fact, they have had another spill off the coast of Washington, a barge, that the same model was used, and that has been cleaned up very well.

Mr. TAUZIN. We are going to visit, in fact, the State of Washington in June, and one of our purposes is to look specifically at what you and others have pointed out to us as a model for State-Federal cooperation in this critical area.

It also, of course, relates to the preemption issue as we are going to try to resolve it. So that if you have any thoughts as to how those preemption concerns we have will be addressed in the proposal by the Secretary as opposed to how we address them as opposed to how you would like to see them addressed, we would very much welcome those comments early.

Gentlemen, thank you very much. We appreciate your contributions.

Mr. TAUZIN. The next panel will be a short one: Mr. C. G. Groat, the State Geologist of Louisiana and Director of the Louisiana Geological Survey, in the Office of the Secretary, Department of Natural Resources, and representing the Coastal States Organization, accompanied by Mr. Terry Howey, Director of the Coastal Management Division, Louisiana Department of Natural Resources.

While we are waiting, let me point out that Mr. Dennis Kelso, the Alaskan Department of Environmental Conservation, will be testifying this afternoon on Mr. Young's bill. He has asked permis-

sion to participate in the discussion on H.R. 1465. His statement will be included in the record at this point, without objection.

[The statement of Mr. Kelso can be found at end of hearing.]

Mr. TAUZIN. During the testimony on H.R. 2168, the chair will welcome his comments on H.R. 1465, and we will make every effort to hear Mr. Kelso's testimony without asking him to sit on two separate panels.

We now welcome Mr. Groat for your testimony, sir.

STATEMENT OF C. G. GROAT, STATE GEOLOGIST OF LOUISIANA, DIRECTOR, LOUISIANA GEOLOGICAL SURVEY, OFFICE OF THE SECRETARY, DEPARTMENT OF NATURAL RESOURCES, REPRESENTING COASTAL STATES ORGANIZATION; ACCOMPANIED BY TERRY HOWEY, PH.D., DIRECTOR, COASTAL MANAGEMENT DIVISION, LOUISIANA DEPARTMENT OF NATURAL RESOURCES

Mr. GROAT. Thank you, Mr. Chairman. I would emphasize that I am speaking on behalf of the Coastal States Organization and that, while Louisiana does support the need for comprehensive oil spill legislation, the State's position on individual parts of this legislation is not necessarily coincident with CSO in all cases.

I am also submitting the written comments for the record, and I think you will note that the comments of CSO on this bill are not much different from those submitted in the past, simply because the legislation hasn't changed that much. All I will do this morning is hit a few high points based on our position and reflect on what we have heard this morning.

The first point is that we do support the bill and that we also continue to support the Protocols. This relates to one of the key issues that face States continually, and one that cropped up this morning, that of preemption. As you might expect, the Coastal States Organization and its member States, resist any attempt to preempt State authority in most areas, but particularly in this case, and is on record stating that position.

The only case where preemption was generally agreed to, and not without some difficulty, was in the light of supporting the Protocols because CSO feels that the Protocols are essential to dealing with the very problems you were questioning witnesses about earlier, those areas that domestic legislation can't cover. If we don't deal with that problem by implementing the Protocols, the serious problem will continue.

Therefore, we have agreed to some preemption, for the Protocols but not to preemption in general. And I think the CSO is very pleased to see that the administration bill has taken this position as well. If we are reading correctly what "moving between the shoals" means, as Secretary Skinner mentioned this morning, the legislation has moved in the direction of the Coastal States Organization's position.

We also, as a corollary to not supporting preemption, do support the maintenance of the State oil spill funds and that States have to maintain their authority their use. They have maintained it in the past and we see no reason to give up that authority in light of a Federal program that is so far unproven.

We are also pleased to see the inclusion of the inland oil barges in 1465. From a State's position, that is particularly important, and particularly important from the perspective of Louisiana. With the largest inland waterway system in the Nation, much of what moves and affects Louisiana moves on inland waterways and moves in barges. So we feel that is an extremely important provision of the bill.

And the Coastal States Organization is particularly interested in maintaining no separate status for inland tankers, and again was pleased to see that the administration position essentially concurs with this lack of differentiation.

The direct draw authority of $100,000 we see as a positive step in the legislation. If I remember right, that has increased from $50,000 in previous legislation, and we would not be inclined to support the ideas that it be reduced back to $50,000 again. In fact, you could make a case that it ought to be increased above $100,000, under the assumption that the ability to draw funds in substantial amounts quickly might cause a quick and more effective response and therefore preclude the need for drawing largely on other funds because delay resulted in worse effects. So we would at a minimum argue for keeping it at $100,000 and possibly increasing it beyond that.

In summary of our position on this particular legislation, preemption was the major issue that caused the Organization to have some concerns in the past. But feeling that the legislation was so called for, so needed, so important, particularly in light of recent events, CSO compromised to a significant degree on that issue with regard to the Protocols. CSO felt this was necessary to support the legislation, and we continue to feel this way.

I would like to comment on a couple of things that came up this morning. With regard to contingency plans, and the idea of strike forces, I am certain that the States, in general—the Coastal States Organization, in particular—would support the deployment of strike teams to more effectively deal with spills. And then there is the question of review of contingency plans. Who looks after these things? Who makes sure they are right? Is it totally a Federal responsibility? Should it be the Coast Guard's responsibility? Should it be some other Federal agency? I think the States should have a significant role because as was pointed out this morning by Admiral Yost, the ultimate boom is the beach and the oil, wherever spilled, is going to end up on State beaches and in State waters. So the States have a vital interest in how the responses are handled and how quickly they are handled.

Perhaps it would be appropriate that under the reauthorization for the Coastal Zone Management Act that is coming up, some role be considered for State coastal zone management programs as a reviewing authority for contingency plans. They represent the State's coastal interests, they are responsible for shoreline and wetland protection. CZM programs are responsible for maintaining the environmental integrity of the coastal area, and oil spill contingency plan review may be an issue that Dr. Howey would like to respond to as Director of the Louisiana coastal zone management program.

I also point out that the Coastal States Organization two years ago did a review and a poll of State oil spill contingency legislation.

While it is two years old, we offer it to the committee for its consideration, and would offer to update the review, if it would be useful to the committee, and provide you with the most current information on State legislation in that area.

With that, Mr. Chairman, I conclude comments, again referring the full written testimony to the record.

[The statement of Mr. Groat can be found at the end of the hearing.]

Mr. TAUZIN. Well, again, thank you, Mr. Groat. We do appreciate your association's constant vigilance in this area. As you know, we have heard from you many times on it as we have tried to move this bill along.

Quickly, do you have any comments on the administration's proposal on preemption?

Mr. GROAT. We would have to study the legislation since this is the first time we have seen it. But on the face of it, it seems to provide for protection of the State's interests by the mechanism they have proposed. Whether the fine print comes out that way or not, we would have to see.

Mr. TAUZIN. Secondly, what about your own experience with oil spills and facilities in the OCS in Louisiana, where there is so many? I might even reference the Hackberry spill for the Strategic Petroleum Reserve. Has response been adequate, in your mind, over time?

Mr. GROAT. Well, we have, as I am sure you are aware, in the Gulf of Mexico, Clean Gulf Associates, an industry organization, and one of the strike teams happens to be in Mobile. So we have some presence in the Gulf of both industry and Federal response.

I think our record in general from the offshore oil industry, related primarily to the OCS activities, has been good, and I think the potential for the kinds of damage that we have seen from catastrophic events like the *Valdez* spill coming from the offshore oil industry is not very large simply because the volumes of oil produced from any one platform are so much smaller. A couple thousand barrels a day is generally what we are talking about as opposed to 240,000 spilled "instantly" in Prince William Sound.

So the ability to respond to incidents offshore has been adequate up this point. Although as you are probably aware, Minerals Management Service is very quickly organizing to review their plans, to implement drills, to do things to be sure that its response capabilities are adequate, and we are watching very closely.

Mr. TAUZIN. We have been trying to impress upon other Members who have opposed offshore drilling that very point. That the risk on a platform is significantly lower than the risk involved in massive tanker shipments into the United States. That has been the experience in the OCS and Louisiana, is that correct?

Mr. GROAT. It is particularly true in the Gulf where warm waters cause high gravity oil to disperse and break down very quickly and spills in federal waters can be dealt with with using dispersants and quick response.

Mr. TAUZIN. We have got a vote on the floor, a small matter called the minimum wage bill. And while I would love not have to interrupt these hearings, we have to interrupt them just briefly. I will be returning just shortly.

In fact, Jolene, have you voted yet on the floor? Well, in fact, we will just continue if you don't mind.

Jolene, I am going to ask you to take the chair, if you don't mind, for a little while. We are just concluding the testimony of the third panel, and we are going to take Mr. Clifton Curtis, of the Oceanic Society next.

Mr. Howey, do you have any comments you would like to make?

Mr. HOWEY. The only thing I might want to add is that I think an important provision of this bill is the provision for utilization of funds for natural resources restoration in the event of a spill. I think that is something extremely important and needs to be maintained in whatever final form the bill takes.

Mrs. UNSOELD. [presiding] I thank you very much for being here, and I will read with interest ygur testimony.

Mr. GROAT. Thank you, Madam Chair.

Mrs. UNSOELD. The next panelist then is Mr. Curtis, who is President of the Oceanic Society.

Mr. Curtis?

STATEMENT OF CLIFTON CURTIS, PRESIDENT, THE OCEANIC SOCIETY

Mr. CURTIS. Thank you, Congresswoman Unsoeld.

My testimony today is presented on behalf of the Oceanic Society, Environmental Policy Institute and Friends of the Earth, as well as several other environmental organizations whose names will be submitted before the close of the hearing record.

As we all know, there are events in history that indelibly sear the public's consciousness. Some of those events can have a profound impact on the way we think about ourselves, other species, and the planet's national ecosystem. The *Exxon Valdez* spill is an incident of that caliber. It was a tragedy that didn't have to happen, shouldn't have happened, and we are challenged to make sure that it never happens again.

Citizens are expecting us, our elected leaders, to do everything possible to ensure that it won't. My organization has prepared an 8-page listing of imperatives for action for the U.S. Congress and the administration and for Exxon and Alyeska in response to the *Exxon Valdez* spill, and I have attached that as an addendum to my prepared testimony.

As detailed in that statement, enactment of comprehensive oil spill liability and compensation legislation is one of the imperatives we need to act on. It is time to get the job done, before the close of this first session of the 101st Congress. One catastrophic spill, without an adequate legal regime, is one too many.

At present there exists a fragmented, inadequate hodge-podge of national and State laws. What we need is a combination of national, State and international components. Those are a comprehensive Federal law, retention of State liability laws, and U.S. ratification of the 1984 CL Fund Protocols. Each complements the others to ensure full and fair coverage.

H.R. 1465 in many respects represents the kind of comprehensive law that is needed. However, several provisions need to be

strengthened or added. All of our recommended changes are detailed in an appendix A attachment to my prepared statement.

Among other recommendations, let me just highlight a few of those changes that we feel need to be made to H.R. 1465.

1. The new law needs to ensure that the scope of liability for natural resources damage is broadened substantially.

2. The new law needs to require that all clean-up related to OCS facilities will be paid for by the spiller without regard to limits.

3. We need to broaden the exceptions to the limits on liability by which you can pierce or break those limit caps.

4. Among the uses in the domestic trust fund, we think that Senator Mitchell's bill offers a number of important provisions that need to be included, as well as uses of the fund for costs for establishing strike team centers in major ports around the country, for research and development for clean-up technologies, and for the purchase of VTS and other navigational aids for ports and harbors, such as in Puget Sound and elsewhere, to make sure that we have state-of-the-art systems.

Another change is that we urge you to consider a doubling of the Domestic Trust Fund from the $5 million per incident level in H.R. 1465 to make it a $1 billion per incident trust fund, with that limit being waived, as the administration has suggested, where required to meet U.S. obligations under international treaty.

Another recommendation, as the administration has alluded to and Coastal States Organization, H.R. 1465 needs to preserve State liability laws.

Chairwoman Unsoeld, in addition to the specific recommendations in our testimony and appendix A, my prepared statement details the reasons why a comprehensive regime should include both U.S. ratification of the Protocols and preservation of coastal state liability laws. Each time the environmental community has presented testimony, we have stated that as a general principle there should be no limits on liability. Such limits undermine the goal of the "polluter pays" principle.

At congressional hearings in 1986 testimony I presented suggested preemption of State liability laws may be a necessary quid pro quo to achieving a comprehensive regime. As indicated today, though, that view was mistaken. Based on expressed views of various interests, the converse is far closer to reality. Preservation of State liability laws is the necessary quid pro quo to achieving a comprehensive regime.

We, therefore, strongly urge this subcommittee and the full committee to preserve laws as part of the bill's requirements.

In closing, the *Exxon Valdez* spill is a moment in history. It can catalyze the reforms that are needed to redress this Nation's inadequate regime for oil spill liability and compensation. The clock is running, though, and we need to act.

Thank you.

Mrs. UNSOELD. Thank you, Mr. Curtis.

[The statement of Mr. Curtis can be found at the end of the hearing.]

Mrs. UNSOELD. I think that that helps to round out the quality of the testimony today also.

Looking around, I don't see a lot of colleagues to ask questions. It may be that you will receive some in written form in the future, and I hope that you would respond to those.

And, if there is no other business, I believe we will recess until two o'clock, when we will take up H.R. 2168.

Mr. Young?

Mr. YOUNG. No questions.

Mrs. UNSOELD. All right. Then the committee is recessed.

[Whereupon, at 1:18 p.m., the subcommittee was adjourned.]

[The following was submitted for the record:]

I

101ST CONGRESS
1ST SESSION

H. R. 1465

To establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1989

Mr. JONES of North Carolina (for himself, Mr. DAVIS, Mr. STUDDS, Mr. LENT, Mr. HUGHES, Mr. YOUNG of Alaska, Mr. TAUZIN, Mr. HUBBARD, Mr. HUTTO, Mr. FOGLIETTA, Ms. SCHNEIDER, Mr. HERTEL, Mr. DYSON, Mr. LIPINSKI, Mr. BORSKI, Mr. CARPER, Mr. BOSCO, Mr. TALLON, Mr. ORTIZ, Mr. BENNETT, Mr. MILLER of Washington, Mr. MANTON, Mrs. BENTLEY, Mr. PICKETT, Mr. HOCHBRUECKNER, Mr. SOLARZ, Mr. COBLE, Mrs. SAIKI, Mr. LAUGHLIN, Mrs. UNSOELD, Mr. GOSS, Mr. FASCELL, Mr. MINETA, Mr. THOMAS of Georgia, Mr. AKAKA, Mr. DE LUGO, Mr. WALGREN, Mr. DWYER of New Jersey, Mr. TRAFICANT, Mr. KENNEDY, Ms. PELOSI, Mrs. BOXER, Mr. FRANK, and Mr. ECKART) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Public Works and Transportation

MAY 17, 1989

Additional sponsors: Mr. SMITH of Florida, Mr. PALLONE, Mr. LEWIS of Georgia, Mr. LANCASTER, Mr. TORRES, Mr. SAXTON, Mr. DE LA GARZA, Mr. LAGOMARSINO, Mr. OBERSTAR, Mr. LAFALCE, Mr. BATEMAN, Mr. DELLUMS, Mr. DINGELL, Mr. SWIFT, Mr. FIELDS, and Mr. FORD of Michigan

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A BILL

To establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Oil Pollution Liability and Compensation Act of 1989".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

Sec. 101. Definitions.
Sec. 102. Liability.
Sec. 103. Uses of the fund.
Sec. 104. Claims procedure.
Sec. 105. Designation and advertisement.
Sec. 106. Subrogation.
Sec. 107. Financial responsibility.
Sec. 108. Litigation, jurisdiction, and venue.
Sec. 109. Relationship to other law.
Sec. 110. Effective date.

TITLE II—CONFORMING AMENDMENTS

Sec. 201. Trans-Alaska pipeline fund.
Sec. 202. Intervention on the High Seas Act.
Sec. 203. Federal Water Pollution Control Act.
Sec. 204. Deepwater Port Act.
Sec. 205. Outer Continental Shelf Lands Act Amendments.
Sec. 206. Notice to State; increased penalties for failure to report.
Sec. 207. Qualified authorizing legislation.

TITLE III—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

Sec. 301. Definitions.
Sec. 302. Applicability of conventions.
Sec. 303. Recognition of international fund.
Sec. 304. Action in United States courts.
Sec. 305. Contribution to international fund.
Sec. 306. Recognition of foreign judgments.
Sec. 307. Financial responsibility.
Sec. 308. Regulations..

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 101. DEFINITIONS.

For the purposes of this Act, the term—

(1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident;

(3) "claimant" means any person who presents a claim for compensation under this Act;

(4) "damages" means damages for injury to, destruction of, or loss of natural resources and damages for economic loss specified in section 102(a)(2) of this Act, and includes the cost of assessment of damages;

(5) "discharge" means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(6) "exclusive economic zone" means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983,

(7) "facility" means an onshore facility and an offshore facility;

(8) "foreign offshore unit" means a structure or group of structures which is located, in whole or in

part, in the territorial sea or on or over the continental shelf of a foreign country and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the seabed beneath the foreign country's territorial sea or from the foreign country's continental shelf;

(9) "Fund" means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1954;

(10) "guarantor" means any person, other than the responsible party, who provides evidence of financial responsibility for a responsible party under this Act;

(11) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil;

(12) "lessee" means a person holding a leasehold interest in an oil or gas lease on lands beneath navigable waters (as such term is defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301)) on or submerged lands of the Outer Continental Shelf, granted

or maintained under applicable State law or the Outer Continental Shelf Lands Act;

(13) "mobile offshore drilling unit" means a vessel (other than a self-elevating lift vessel) capable of use as an offshore facility;

(14) "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act;

(15) "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government, or any foreign government;

(16) "navigable waters" means the waters of the United States, including the territorial sea;

(17) "offshore facility" means—

(A) a facility of any kind (other than a vessel, a public vessel, or a self-elevating lift vessel) which is located, in whole or in part, on lands beneath navigable waters (as such term is defined in section 2 of the Submerged Lands Act

(43 U.S.C. 1301)) or on the Outer Continental Shelf and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from lands beneath navigable waters or the Outer Continental Shelf; and

(B) a deepwater port licensed under the Deepwater Port Act of 1974;

(18) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(19) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind, any portion of which is located in, on, or under, any land within the United States other than submerged land;

(20) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest therein;

(21) "person" means an individual, corporation, partnership, association, Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body;

(22) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act or applicable State law;

(23) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(24) "remove" or "removal" refers to removal of the oil from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, damage to fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(25) "removal costs" means the costs of removal taken after a discharge of oil has occurred, including all costs of completing removal and the costs to prevent, minimize, or mitigate oil pollution where there was a substantial threat of a discharge of oil including

costs incurred under subsection (c), (d), (e), or (l) of section 311 of the Federal Water Pollution Control Act, the Intervention on the High Seas Act, or section 18 of the Deepwater Port Act of 1974;

(26) "responsible party" means the following:

(A) VESSELS.—In the case of a vessel, the responsible party is any person owning, operating, or chartering by demise, the vessel.

(B) FACILITIES.—In the case of a facility (including a pipeline but not including any other offshore facility), the responsible party is any person owning or operating the facility.

(C) OFFSHORE FACILITIES.—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974, and except as provided in section 102(a)(4)), the responsible party is the lessee or permittee of the area in which the facility is located, or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act for the area in which the facility is located (where the holder is a different person than the lessee or permittee).

(D) DEEPWATER PORTS.—In the case of a deepwater port licensed under the Deepwater

Port Act of 1974, the responsible party is the licensee.

(27) "Secretary" means the Secretary of Transportation;

(28) "tanker" means a vessel constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo; except that the term does not include a non-self-propelled vessel of less than 3,000 gross tons carrying oil in bulk as cargo or in residue from cargo and operating on waters of the United States lying inside the baseline from which the territorial sea is measured or on waters outside such baseline which are part of the Gulf Intracoastal Waterway; and

(29) "territorial sea" means the belt of the sea measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three nautical miles;

(30) "United States" and "State" mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any

other territory or possession over which the United States has jurisdiction; and

(31) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

SEC. 102. LIABILITY.

(a) ELEMENTS OF LIABILITY.—

(1) JOINT, SEVERAL, AND STRICT LIABILITY.—Notwithstanding any other provision of law and subject to the provisions of this section, the responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the waters of the exclusive economic zone is jointly, severally, and strictly liable for the removal costs and damages specified in paragraph (2) that arise out of or directly result from such incident.

(2) COVERED REMOVAL COSTS AND DAMAGES.—

(A) REMOVAL COSTS.—The removal costs referred to in paragraph (1) are removal costs consistent with the national contingency plan, which shall be recoverable by any claimant.

(B) DAMAGES.—The damages referred to in paragraph (1) are the following:

(i) NATURAL RESOURCES.—Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, which shall be recoverable by a United States trustee or a State trustee.

(ii) REAL OR PERSONAL PROPERTY.—Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases such property.

(iii) SUBSISTENCE USE.—Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost.

(iv) REVENUES.—Damages equal to the loss of taxes, royalties, rents, or net profits shares, for a period not to exceed one year, due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(v) PROFITS AND EARNING CAPACITY.—Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant who derives at least 25 percent of his or her earnings from the activities which utilize such property or natural resources, or, if such activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

(3) EXCLUDED DISCHARGES.—Paragraph (1) shall not apply to any discharge permitted by a permit issued under Federal, State, or local law.

(4) DIVISION OF RESPONSIBILITY FOR MODU DISCHARGES ON OR ABOVE THE WATER.—

(A) TREATED FIRST AS A TANKER.—For purposes of determining the responsible party and applying this Act, a mobile offshore drilling unit which is being used as an offshore facility shall be deemed to be a tanker with respect to the discharge, or the substantial threat of a discharge, of oil on or above the surface of the water, except as provided in subparagraph (B).

(B) TREATED AS A FACILITY FOR EXCESS LIABILITY.—To the extent that removal costs and damages from any incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagraph (A) (as such amount may be limited under subsection (c)(1)(A)), the mobile offshore drilling unit shall be deemed to be an offshore facility. For purposes of applying subsection (c)(1)(C), the amount specified in such subsection shall be reduced by the amount for which the responsible party is liable under subparagraph (A).

(5) LIABILITY OF THIRD PARTIES.—

(A) IN GENERAL.—In any case where the responsible party for a vessel or facility can establish that a discharge and the removal costs and damages resulting were caused solely by an act or omission of one or more third parties in accordance with subsection (b)(1)(B) (or solely by such an act or omission in combination with an act of God or an act of war), such third party or parties shall be liable under this section.

(B) LIMITATION APPLIED.—

(i) OWNER OR OPERATOR OF VESSEL OR FACILITY.—If such third party or parties

are the owner or operator of a vessel or facility which caused the incident, the liability of such third party or parties shall be subject to the limits provided in subsection (c), as applied with respect to such vessel or facility.

(ii) OTHER CASES.—In any other case, the liability of such third party or parties shall not exceed the limitation which would have been applicable to the responsible party of the vessel or facility from which the discharge actually occurred if such responsible party were liable.

(b) DEFENSES TO LIABILITY.—

(1) COMPLETE DEFENSES.—Except when the responsible party has failed or refused to report the incident where required by law and the responsible party knows or has reason to know of the incident, there is no liability under subsection (a) if the responsible party establishes that the incident—

(A) resulted from an act of God, an act of war, hostilities, civil war, or insurrection; or

(B) was solely caused by an act or omission of one or more persons other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) DEFENSES AS TO PARTICULAR CLAIMANTS.—There is no liability under subsection (a)—

(A) as to a particular claimant, where the incident is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident is caused by the negligence of that claimant.

(c) LIMITS ON LIABILITY.—

(1) GENERAL RULE.—The total of the liability of a responsible party under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to each incident shall not exceed—

(A) $500 per gross ton or $5,000,000, whichever is greater (but not to exceed $60,000,000), for any tanker;

(B) $300 per gross ton or $500,000, whichever is greater, for any other vessel; or

(C) $75,000,000 for any facility.

(2) EXCEPTIONS.—

(A) PROXIMATE CAUSE.—Paragraph (1) shall not apply if the incident was proximately caused by—

(i) willful misconduct or gross negligence within the privity or knowledge of the responsible party; or

(ii) a violation, within the privity or knowledge of the responsible party, of applicable Federal safety, construction, or operating regulations.

(B) FAILURE OR REFUSAL OF RESPONSIBLE PARTY.—Paragraph (1) shall not apply if the responsible party fails or refuses—

(i) to report the incident where required by law and the responsible party knows or has reason to know of the incident; or

(ii) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities.

(3) ADJUSTING LIMITS OF LIABILITY.—

(A) FACILITIES.—The Secretary is authorized to establish by regulation, with respect to any class or category of facility (other than an off-

shore facility which is not a deepwater port) a maximum limit of liability under this section of less than $75,000,000, but not less than $8,000,000, taking into account the size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(B) PERIODIC REPORTS.—The Secretary shall, from time to time, report to the Congress on the desirability of adjusting the limits of liability specified in paragraph (1) of this subsection.

(d) LIABILITY FOR INTEREST.—

(1) GENERAL RULE.—The responsible party or his guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of a claim under this section for the period described in paragraph (2).

(2) PERIOD.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the date on which the claim is presented to the responsible party, or guarantor, and ending on the date on which the claimant is paid, inclusive.

(B) EXCLUSION OF PERIOD DUE TO OFFER BY GUARANTOR.—If the guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within sixty days after the date upon which the claim is presented pursuant to section 104(a), the period described in subparagraph (A) shall not include any period before such offer is accepted.

(C) EXCLUSION OF PERIODS IN INTEREST OF JUSTICE.—The period described in paragraph (A) shall not include any period—

(i) during which a claimant is not paid due to reasons beyond the control of the responsible party; and

(ii) if it would not serve the interest of justice to include such period.

(D) CALCULATION OF INTEREST.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days in-

cluded within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(E) INTEREST NOT SUBJECT TO LIABILITY LIMITS.—Interest under this paragraph shall be in addition to damages for which claims may be asserted under section 102 and shall be paid without regard to any limitation of liability under subsection (c)(1) of this section. The payment of interest under this subsection by a guarantor shall be subject to section 107(e).

(e) NATURAL RESOURCES.—

(1) LIABILITY.—In the case of an injury to, destruction of, or loss of natural resources under this section, liability shall be—

(A) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States,

(B) to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State, and

(C) where subsection (f) of this section applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such country.

(2) DESIGNATION OF TRUSTEES.—

(A) IN GENERAL.—The President, or the authorized representative of any State or of the foreign government, shall act on behalf of the public as trustee of such natural resources to recover for such damages.

(B) FEDERAL TRUSTEES.—The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act.

(C) STATE TRUSTEES.—The Governor of each State shall designate State and local officials who may act on behalf of the public as trustee for natural resources under this Act and shall notify the President of such designations.

(3) FUNCTIONS OF TRUSTEES.—

(A) FEDERAL TRUSTEES.—The officials designated under paragraph (2)(B)—

(i) shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act for the natural resources under their trusteeship;

(ii) may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for the natu-

ral resources under the State's trusteeship; and

(iii) shall develop and adopt a plan for the restoration, rehabilitation, or replacement or acquisition of the equivalent of the natural resources under their trusteeship.

(B) STATE TRUSTEES.—The officials designated under paragraph (2)(C)—

(i) shall assess damages to natural resources for the purposes of this Act for the natural resources under their trusteeship; and

(ii) shall develop and adopt a plan for the restoration, rehabilitation, or replacement or acquisition of the equivalent of the natural resources under their trusteeship.

(C) NOTICE AND OPPORTUNITY TO BE HEARD.—Plans shall be developed and adopted under subparagraphs (A)(iii) and (B)(ii) only after adequate public notice and opportunity for hearing and consideration of all public comment.

(4) MEASURE OF DAMAGES.—

(A) IN GENERAL.—The measure of damages in any action under this section for injury to, destruction of, or loss of natural resources shall not

be limited to the sums which can be used to restore or replace such resources.

(B) DETERMINE COSTS WITH RESPECT TO PLANS.—Costs shall be determined under subparagraph (A) with respect to plans adopted under paragraph (3) (A) and (B).

(C) NO DOUBLE RECOVERY.—There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

(5) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 shall have the force and effect of a rebuttable presumption on behalf of the trustees in any administrative or judicial proceeding under this Act.

(6) USE OF RECOVERED SUMS.—Sums recovered by the United States Government or a state as trustee under this subsection shall be retained by the trustee, for use only to restore, replace, or acquire the equiva-

lent of such natural resources in accordance with section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended.

(f) RECOVERY BY FOREIGN CLAIMANTS.—

(1) IN GENERAL.—A foreign claimant may only recover removal costs and damages under this Act in accordance with this subsection.

(2) COVERED DISCHARGES.—A foreign claimant may recover only if the discharge of oil was from—

(A) a facility,

(B) a vessel in the navigable waters of the United States, or

(C) a tanker that received oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act for transportation to a port in the United States, the incident having occurred prior to delivery to that port,

and resulted in the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country.

(3) REQUIREMENTS.—A foreign claimant may only recover if—

(A) the claimant first seeks compensation under title III;

(B) the claimant has not been otherwise compensated for the removal costs or damages; and

(C) recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(4) EXCEPTION FOR CANADIAN CLAIMANTS RESPECTING TRANS-ALASKA PIPELINE OIL.—Paragraph (3)(C) shall not apply with respect to recovery by a resident of Canada in the case of an incident described in paragraph (2)(C).

(5) DEFINITION OF FOREIGN CLAIMANT.—For purposes of this subsection, the term "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof.

(g) RECOVERY OF REMOVAL COSTS AND DAMAGES BY RESPONSIBLE PARTY.—

(1) IN GENERAL.—The responsible party for a vessel or facility from which oil is discharged, or which posed the substantial threat of a discharge of oil, may

assert a claim for removal costs and damages under subsection (a) only if he can show that—

(A) he is entitled to a defense to liability under subsection (b), or

(B) he is entitled to a limitation of liability under subsection (c).

(2) EXTENT OF RECOVERY.—A responsible party who is entitled to a limitation of liability, may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs and damages incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under subsection (a) and removal costs and damages incurred by, or on behalf of, the responsible party is limited under subsection (c).

(h) CONTRIBUTION.—A person may bring an action for contribution against any other person who is liable or potentially liable under this section. Such an action shall be brought in accordance with section 108.

(i) INDEMNIFICATION AGREEMENTS.—

(1) IN GENERAL.—No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer the liability imposed under this section

from the responsible party for any vessel or facility or from any person who may be liable for an incident under this section to any other person. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) RELATIONSHIP TO OTHER CAUSES OF ACTION.—Nothing in this Act, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that a responsible party subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(j) CONSULTATION ON REMOVAL ACTIONS.—The Secretary shall consult with the affected trustees designated under section 102(e)(2) on the appropriate removal action to be taken in connection with any discharge of oil. Removal with respect to any discharge shall be considered completed when so determined by the Secretary and the Governor or Governors of the affected State or States, in accordance with the national contingency plan.

SEC. 103. USES OF THE FUND.

(a) IN GENERAL.—The Fund shall be available to the Secretary for—

(1) the payment of removal costs and the cost of carrying out subsections (c), (d), (i), and (l) of section

311 of the Federal Water Pollution Control Act, sections 5 and 7 of the Intervention on the High Seas Act, and section 18 of the Deepwater Port Act;

(2) the payment of removal costs and damages described in section 102(a)(2) not otherwise compensated under this Act;

(3) the payment of removal costs and damages resulting from the discharge, or substantial threat of discharge, of oil from a foreign offshore unit;

(4) the payment of administrative and personnel costs and expenses reasonably necessary for and incidental to the implementation and administration of this Act, and

(5) the payment of contributions to the International Fund under title III of this Act.

(b) DEFENSES TO LIABILITY FOR THE FUND.—The Fund shall not be available to pay any claim for removal costs or damages—

(1) as to a particular claimant, where the incident of oil or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(2) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(c) MAXIMUM AMOUNT PAYABLE FROM FUND.—The maximum amount which may be paid from the Fund with respect to any incident in combination with payment, if any, under the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984, shall not exceed $500,000,000.

(d) FEDERAL AND STATE OFFICIALS WHO MAY OBLIGATE FROM THE FUND.—The Secretary is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The Secretary is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(e) OBLIGATION OF THE FUND BY STATE OFFICIALS.—

(1) AUTHORITY.—In accordance with regulations promulgated under this subsection, the Governor of each State, or any appropriate State official designated by the Governor, is authorized to obligate the Fund for payment in an amount not to exceed $100,000 for removal costs not inconsistent with the national contingency plan required for the immediate response to an incident.

(2) NOTIFICATION.—A Governor or designee exercising the authority granted by this subsection shall notify the Secretary within 24 hours of any obligation of a payment from the Fund.

(3) REGULATIONS.—Not later than six months after the date of the enactment of this Act, the Secretary shall publish proposed regulations detailing the manner in which the authority to obligate the Fund and to enter into agreements under this subsection is to be exercised, and, not later than three months after the close of the comment period on such proposed regulations, the Secretary shall promulgate the regulations.

(f) RIGHTS OF SUBROGATION.—Payment of any claim by the Fund under this Act shall be subject to the United States Government acquiring by subrogation of all rights of the claimant to recover from the responsible party.

(g) AUDIT.—The Comptroller General shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the establishment of the Fund. The Comptroller General shall thereafter provide such auditing of the Fund

as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h) PERIOD OF LIMITATIONS FOR CLAIMS.—

(1) REMOVAL COSTS.—No claim may be presented under this section for recovery of removal costs unless the claim is presented within three years after the date of completion of all removal action.

(2) DAMAGES.—No claim may be presented under this section for recovery of damages unless the claim is presented within three years after the date on which the loss and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of damages under section 102(a)(2), if later, the date on which final regulations are promulgated under section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(i) LIMITATION ON PAYMENT FOR SAME COSTS.—Where the Secretary has paid an amount out of the Fund for any costs or damages specified under subsection (a), no other claim may be paid out of the Fund for the same costs or damages.

(j) OBLIGATION IN ACCORDANCE WITH PLAN.—

(1) IN GENERAL.—Except as provided in paragraph (2), amounts may be obligated from the Fund for

the restoration, rehabilitation, or replacement, or acquisition of natural resources only in accordance with a plan adopted under section 102(e)(3).

(2) EXCEPTION.—Paragraph (1) shall not apply in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

SEC. 104. CLAIMS PROCEDURE.

(a) PRESENTATION TO RESPONSIBLE PARTY OR GUARANTOR.—Except as provided in subsection (b), all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 105(a).

(b) PRESENTATION TO FUND.—Claims for removal costs or damages may be presented first to the Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 105(c);

(2) by a responsible party who may assert a claim under section 102(g);

(3) by the Governor of a State for removal costs incurred by that State; or

(4) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage

for which the Trust Fund is liable under section 103(a)(3).

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 105(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Trust Fund.

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 102 or because the responsible party and his guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Trust Fund.

(e) PROCEDURE FOR CLAIMS AGAINST THE FUND.—The Secretary shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing,

settlement, and adjudication of claims under this Act against the Fund.

SEC. 105. DESIGNATION AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—When the Secretary receives information of an incident, he shall, where possible and appropriate, designate the source or sources of the discharge. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY THE RESPONSIBLE PARTY OR GUARANTOR.—If a responsible party or guarantor fails to inform the Secretary, within five days after receiving notification of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Secretary. Advertisement under the preceding sentence shall begin no later than fifteen days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Secretary shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertise-

ment under this subsection shall continue for a period of no less than thirty days.

(c) ADVERTISEMENT BY THE SECRETARY.—If—

(1) the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation under subsection (a),

(2) the source of the oil pollution was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil pollution under subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Trust Fund.

SEC. 106. SUBROGATION.

(a) IN GENERAL.—Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under this Act.

(b) ACTIONS ON BEHALF OF THE FUND.—Upon request of the Secretary, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and all costs incurred by the Fund by reason of the claim, including interest (including prejudgment interest), administrative and adjudicative costs, and attorney's fees. Such an action

may be commenced against any responsible party or (subject to section 107(e)) guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.

SEC. 107. FINANCIAL RESPONSIBILITY.

(a) VESSELS.—

(1) REQUIREMENT.—The responsible party for any vessel over 300 gross tons (except a non-self-propelled vessel that does not carry oil as cargo or fuel), using any port or place in the United States or the navigable waters or any offshore facility shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to meet the maximum amount of liability to which, in the case of a tanker, the responsible party could be subjected under section 102(c)(1)(A) of this Act, or to which, in the case of any other vessel, the responsible party could be subjected under section 102(c)(1)(B) of this Act, in a case where the responsible party would be entitled to limit liability under that

section. If the responsible party owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection.

(3) DENYING ENTRY TO OR DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any offshore facility or any port or place in the United States, or to the navigable waters, or (B) detain at such a facility or port or place, any vessel that, upon request, does not produce the certification required under this subsection or the regulations issued under this subsection.

(4) SEIZURE OF VESSEL AND OIL.—Any vessel subject to the requirements of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility and any oil carried as cargo on such vessel shall be subject to seizure by the United States.

(b) OFFSHORE FACILITIES.—Each responsible party with respect to an offshore facility shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under section 102 of this Act in a case where the responsible party would be entitled to limit liability under this section. In cases where a person is the responsible party for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) METHODS OF FINANCIAL RESPONSIBILITY.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods, which the Secretary determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the Secretary is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.

(d) CLAIMS AGAINST GUARANTOR.—Any claim for which liability may be established under section 102 of this

Act may be asserted directly against any guarantor providing evidence of financial responsibility for a responsible party liable under that section for costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under section 102. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the responsible party but the guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility required under this Act which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident.

(f) CIVIL PENALTY.—

(1) IN GENERAL.—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of this section or the regulations issued under this section, or with a denial or detention order issued under subsection (a)(3) of this section, shall be liable to the United States for a

civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

(2) JUDICIAL RELIEF.—In addition to, or in lieu of, assessing a penalty under paragraph (1) of this subsection, the Secretary may request the Attorney General to secure such relief as necessary to compel compliance with this section, including, but not limited to, a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(g) CONTINUATION OF REGULATIONS.—Any regulation respecting financial responsibility, which has been issued

pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, shall be deemed and construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by new regulations issued under this section.

(h) UNIFIED CERTIFICATE.—The Secretary may issue one certificate of financial responsibility for purposes of this Act and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

SEC. 108. LITIGATION, JURISDICTION, AND VENUE.

(a) REVIEW OF REGULATIONS.—Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within 90 days from the date of promulgation of such regulations.

(b) JURISDICTION.—Except as provided in subsection (a) of this section, the United States district courts shall have original jurisdiction over all causes of action arising under this Act (which shall be deemed to include actions under the International Convention on Civil Liability for Oil Pollution Damages, 1984, and the International Convention on the Establishment of an International Fund for Compensation for

Oil Pollution Damage, 1984), without regard to the citizenship of the parties or the amount in controversy.

(c) VENUE.—Venue shall lie in any district in which the incident, injury, or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for services of process. For the purposes of this section, the Fund and the International Fund, established under article 2 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, shall reside in the District of Columbia.

(d) SAVINGS PROVISION.—Nothing in this Act shall affect any action commenced before the date of enactment of this Act.

(e) PERIOD OF LIMITATIONS.—

(1) DAMAGES.—Except as provided in paragraphs (3) and (4), an action may not be commenced for damages under this Act, unless that action is commenced within three years after the date on which the loss and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of damages described in section 102(a)(2)(B)(i), if later, the date on which regulations are promulgated under section 301 of the Comprehen-

sive Environmental Response, Compensation, and Liability Act of 1980.

(2) REMOVAL COSTS.—Except as provided in paragraphs (3) and (4), an action may not be commenced for recovery of removal costs under this Act, unless that action is commenced within three years after completion of the removal action. An action may be commenced under section 102 for recovery of removal costs at any time after such costs have been incurred.

(3) ACTIONS FOR CONTRIBUTION.—An action may not be commenced for contribution for any removal costs or damages unless that action is commenced within three years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) SUBROGATION.—An action based on rights subrogated pursuant to this Act by reason of payment of a claim may not be commenced under this Act unless that action is commenced within three years after the date of payment of such claim.

SEC. 109. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—Except as provided in this Act, an action may not be brought in a court of the United States, or of any State or political subdivision thereof, for removal costs or categories of damages specified under section 102(a)(2) of this Act.

(b) PRESERVATION OF STATE FUNDS.—Nothing in this title or section 9509 of the Internal Revenue Code of 1954 shall affect the authority of any State to establish or continue in effect, and to require any person to contribute to, a fund a purpose of which is to pay for removal costs or damages arising out of or directly resulting from an incident.

(c) NO PREEMPTION OF CIVIL PENALTIES.—Nothing in this Act or section 9509 of the Internal Revenue Code of 1954 shall affect the authority of the United States or any State or political subdivision thereof to impose, or to determine the amount of, any fine or penalty for any violation of law relating to an incident.

(d) FINANCIAL RESPONSIBILITY.—Except as provided in this Act, a responsible party for a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall not be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the discharge, or substantial threat of a discharge, of oil from such vessel or facility. Evidence of compli-

ance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such vessel or facility. A State may enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility imposed under section 107 of this Act.

SEC. 110. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title shall apply with respect to an incident occurring after the date of the enactment of this Act.

(b) PAYMENTS FROM FUND.—Payments under section 103(a) may not be made before the commencement date (as that term is defined in section 4611(f)(2) of the Internal Revenue Code of 1986).

TITLE II—CONFORMING AMENDMENTS

SEC. 201. TRANS-ALASKA PIPELINE FUND.

(a) Section 204(b) of the Trans-Alaska Pipeline Authorization Act is amended—

(1) in the first sentence, by inserting after "any area" the following: "in the State of Alaska";

(2) in the first sentence, by inserting after "any activities" the following: "related to the trans-Alaska oil pipeline"; and

(3) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Pollution Liability and Compensation Act of 1989.".

(b) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is repealed. The repeal made by the preceding sentence shall not affect the applicability of that subsection to claims arising before the date of the enactment of this Act. The repeal of paragraphs (4), (6), and (8) of that subsection shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under subsection (c) of this section and the rebate of all remaining amounts under, and the completion of all actions required to carry out, such subsection.

(c)(1) Not later than 210 days after the date of enactment of this Act, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the Secretary the total amount of claims outstanding against that Fund as of the date of enactment of this Act. The amount of that Fund exceeding the total amount so certified shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(2) After the settlement of all claims described in paragraph (1) and the completion of all actions, if any, by the

Trans-Alaska Pipeline Fund for recovery of amounts paid on such claims, the remaining amounts in that Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(3) Whenever a rebate is made on a pro rata basis to the owners of oil under paragraph (1) or (2) of this subsection, each owner's share of the rebate shall be an amount determined by dividing the amount contributed by that owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners of that Fund.

(d) Officers and trustees, both present and former, of the Trans-Alaska Pipeline Liability Fund shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

SEC. 202. INTERVENTION ON THE HIGH SEAS ACT.

Section 17 of the Intervention on the High Seas Act is amended to read as follows:

"SEC. 17. The Oil Spill Liability Trust Fund shall be available to the Secretary for actions taken under sections 5 and 7 of this Act.".

SEC. 203. FEDERAL WATER POLLUTION CONTROL ACT.

Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Subparagraph (H) of paragraph (2) of subsection (c) is amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: ", in the case of any discharges of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Oil Spill Liability Trust Fund".

(2) Subsection (d) is amended by striking out the last sentence.

(3)(A) Subsections (f), (g), and (i) of section 311 of the Federal Water Pollution Control Act shall not apply with respect to any incident for which liability is established under section 102 of this Act.

(B) Paragraphs (2) and (3) of subsection (f) are amended by striking out "under subsection (c) for the removal of such oil or substance by the United States Government" each place it appears and inserting in lieu thereof "under subsection (c) for the removal of such oil or substance by the United States Government and for payments made pursuant to section 103(a)(1) of the Oil Pollution Liability and Compensation Act of 1989".

(4) Subsection (i) is amended by striking out "(1)" after "(i)" and striking out paragraphs (2) and (3).

(5) Subsection (k) is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the general fund of the Treasury. The Oil Spill Liability Trust Fund shall assume all liability incurred by the revolving fund established under section 311(k) of the Federal Water Pollution Control Act.

(6) Subsection (l) is amended by striking out the second sentence.

(7) Subsection (p) is repealed.

(8) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (l). Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund.".

SEC. 204. DEEPWATER PORT ACT.

The Deepwater Port Act of 1974 is amended as follows:

(1) In section 4(c)(1) strike "section 18(l) of this Act;" and insert in lieu thereof "section 107 of the Oil Pollution Liability and Compensation Act of 1989,";

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), (n), and paragraphs (1) and (2) of subsection (m) of section 18 are deleted.

(3) Paragraph (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section", and inserting in lieu thereof "Oil Spill Liability Trust Fund".

(4) Subsections (c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d) respectively, and paragraphs (3) and (4) of subsection (m) are redesignated as paragraphs (1) and (2), respectively.

(5) Paragraph (1) of subsection (a) of section 19 is amended by striking the period at the end of the second sentence and inserting in lieu thereof "except that discharges from a deepwater port or from a vessel within a deepwater port safety zone which are subject to the civil penalty provisions of section 18(a)(2) of the Deepwater Port Act of 1974 shall not be subject to the penalty provisions of any other Federal law."

(6) Any amounts remaining in the Deepwater Port Liability Fund, established under section 18(f) of the Deepwater Port Act of 1974, shall be deposited in the Fund established under this Act. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Deepwater Port Liability Fund.

SEC. 205. OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS.

Title III of the Outer Continental Shelf Lands Act Amendment of 1978 is hereby repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Oil Spill Liability Trust Fund. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund.

SEC. 206. NOTICE TO STATE; INCREASED PENALTIES FOR FAILURE TO REPORT.

(a) Section 311(b)(5) of the Federal Water Pollution Control Act is amended by inserting after the first sentence the following: "The Federal agency shall immediately notify the appropriate State agency of any State that is, or may reasonably be expected to be, affected by the discharge of oil.".

(b) The second sentence of section 311(b)(5) of the Federal Water Pollution Control Act is amended by striking "fined not more than $10,000, or imprisoned for not more than one year, or both" and inserting in lieu thereof "fined in accordance with the applicable provisions of title 18 of the United States Code, or imprisoned for not more than three years (or not more than five years in the case of a second or subsequent conviction), or both".

SEC. 207. QUALIFIED AUTHORIZING LEGISLATION.

This Act shall be considered to be qualified authorizing legislation for purposes of section 4611(f)(2)(B) of the Internal Revenue Code of 1986.

SEC. 208. EFFECTIVE DATE.

Sections 201, 202, 203, 204, and 205 shall be effective on the commencement date (as that term is defined in section 4611(f)(2) of the Internal Revenue Code of 1986).

TITLE III—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

SEC. 301. DEFINITIONS.

For the purposes of this title—

(1) the terms "ship", "owner", "oil", "pollution damage", and "incident" shall have the meanings provided in article I of the Civil Liability Convention;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "financial responsibility" has the same meaning as "financial security" under the Civil Liability Convention;

(4) the term "Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984; and

(5) the term "International Fund" means the International Oil Pollution Compensation Fund, established under article 2 of the Fund Convention.

SEC. 302. APPLICABILITY OF CONVENTIONS.

During any period in which the Civil Liability Convention and the Fund Convention are in force with respect to the United States, liability relating to pollution damage arising from an incident involving a ship shall be determined in accordance with the Civil Liability Convention and Fund Convention. Nothing in this title shall constitute a ratification of either the Civil Liability Convention or the Fund Convention.

SEC. 303. RECOGNITION OF INTERNATIONAL FUND.

The International Fund is recognized under the laws of the United States as a legal person, and shall have the capacity to acquire and dispose of real and personal property, and to institute and be party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State as the International Fund's agent for the service of process in any legal proceedings involving the International Fund within the United States. The International Fund and its assets shall be exempt from all direct taxation and payment of any customs duties in the United States.

SEC. 304. ACTION IN UNITED STATES COURTS.

(a) SERVICE OF PROCESS ON FUND.—In any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) INTERVENTION.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention.

SEC. 305. CONTRIBUTION TO INTERNATIONAL FUND.

(a) PAYMENTS TO BE MADE FROM OIL SPILL LIABILITY TRUST FUND.—The amount of any contribution to the International Fund which is required to be made under article 10 of the Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986.

(b) INFORMATION.—The Secretary may, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal, installation, or other installations in the United States under article 10 of the

Fund Convention to provide all information relating to that oil as may be necessary to carry out subsection (a) of this section, articles 10, 12, 13, 14, and 15 of the Fund Conventions, and Article 29 of the Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

SEC. 306. RECOGNITION OF FOREIGN JUDGMENTS.

Any final judgment of a court of any country which is a party to the Civil Liability Convention or to the Fund Convention in an action for compensation under either convention shall be recognized by any court of the United States having jurisdiction under this Act, when that judgment has become enforceable in that country and is no longer subject to ordinary form of review, except where—

(1) the judgment was obtained by fraud, or

(2) the defendant was not given reasonable notice and a fair opportunity to present its case.

SEC. 307. FINANCIAL RESPONSIBILITY.

(a) UNITED STATES DOCUMENTED SHIPS.—The owner of each ship which is documented under the laws of the United States which is subject to the Civil Liability Convention shall establish and maintain, in accordance with regulations promulgated by the Secretary evidence of financial

responsibility as required in article VII of the Civil Liability Convention.

(b) OTHER SHIPS.—The owner of each ship (other than a ship to which subsection (a) applies or a ship which is a public vessel), which is subject to the Civil Liability Convention and which enters or leaves a port or terminal in the United States or uses an Outer Continental Shelf facility or an offshore facility that is or was licensed under the Deepwater Port Act of 1974, shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility as required in article VII of the Civil Liability Convention. Any ship which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of this subsection. Any ship carrying only oil as cargo, fuel, or residue, which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of section 107 of this Act.

(c) AUTHORITY OF SECRETARY TO ISSUE.—The Secretary is authorized to issue any certificate of financial responsibility which the United States may issue under the Civil Liability Convention.

(d) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by

section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate demonstrating compliance with this section.

(e) DENYING ENTRY AND DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility or to any port or place in the United States, or (2) detain at the facility or port or place in the United States, any ship subject to this section which, upon request, does not produce the certificate demonstrating compliance with this section or regulations issued hereunder.

(f) CIVIL PENALTY.—Any person who, after notice and an opportunity for a hearing, is found to have violated this section, any regulation issued under this section, section 305(b), or section 308, or any denial or detention order issued under subsection (e) of this section shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the Secretary in accordance with the procedures set forth in section 107 of this Act.

(g) WAIVER OF SOVEREIGN IMMUNITY.—The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the Fund Convention relating to any

ship owned by the United States and used for commercial purposes.

SEC. 308. REGULATIONS.

The Secretary may prescribe the necessary regulations to carry out this Act and all obligations of the United States under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

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STATEMENT OF SECRETARY OF TRANSPORTATION
SAMUEL K. SKINNER
BEFORE THE COMMITTEE ON
MERCHANT MARINE AND FISHERIES
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 11, 1989

OIL SPILL LIABILITY AND COMPENSATION

GOOD MORNING MR. CHAIRMAN,

I AM VERY PLEASED TO BE HERE THIS MORNING TO REITERATE THE ADMINISTRATION'S CONTINUED STRONG SUPPORT FOR COMPREHENSIVE OIL SPILL LIABILITY AND COMPENSATION LEGISLATION. I HAVE TRANSMITTED A BILL TO THE CONGRESS THIS MORNING AND, ALTHOUGH I WISH WE COULD HAVE MADE THE BILL AVAILABLE FOR YOUR REVIEW SOONER, I WANT TO ASSURE YOU THAT WE HAVE BEEN WORKING AROUND THE CLOCK TO GET IT TO YOU TODAY.

WITH ME TODAY IS ADMIRAL PAUL A. YOST, COMMANDANT OF THE COAST GUARD, RECENTLY RETURNED FROM VALDEZ, ALASKA.

FIRST LET ME SAY, MR. CHAIRMAN, HOW PLEASED I AM THAT YOU ARE HOLDING A HEARING ON THIS MATTER AS QUICKLY AS YOU ARE.

THIS COMMITTEE HAS BEEN A LEADER IN THE SEARCH FOR A BIPARTISAN OIL SPILL BILL FOR SEVERAL YEARS, AND IT IS NOTABLE THAT H.R. 1465 WAS INTRODUCED BEFORE THE EXXON VALDEZ DISASTER THAT HAS PROMPTED SO MUCH RECENT CONCERN. WE HOPE THE SENATE WILL PROCEED JUST AS QUICKLY WITH LEGISLATION AND ALSO WITH ITS ADVICE AND CONSENT TO RATIFICATION OF THE INTERNATIONAL PROTOCOLS. WE CONSIDER THE INCLUSION OF THE 1984 INTERNATIONAL PROTOCOLS IMPLEMENTATION AN ESSENTIAL ELEMENT OF THE PACKAGE.

MY COMMENTS TODAY ARE MADE WITHIN THE CONTEXT OF BOTH BILLS AND SHOULD BE CONSTRUED AS AN EFFORT ON THE PART OF THE ADMINISTRATION TO WORK WITH THE CONGRESS TOWARD ENACTMENT AS SOON AS IS POSSIBLE.

TODAY I WILL ADDRESS SEVERAL MAJOR ISSUES OF CONCERN TO THE ADMINISTRATION AND OF COURSE, WE WILL BE AVAILABLE TO WORK WITH YOU ON THE TECHNICAL DETAILS.

I SHOULD NOTE, AT THE OUTSET, THAT WE SUPPORT MANY ASPECTS OF THE LIABILITY AND COMPENSATION SYSTEM ESTABLISHED BY H.R.1465. HOWEVER, OUR POSITION DIFFERS FROM YOUR BILL IN SEVERAL KEY AREAS.

FIRST, WITH RESPECT TO RESPONSIBLE PARTY LIABILITY LIMITS, THE ADMINISTRATION RECOMMENDS RAISING THE LIMITS FOR TANKERS, AT $500 PER GROSS TON, TO $78 MILLON. THAT AMOUNT

IS COMPARABLE TO THE CURRENT SHIPOWNER LIABILITY LEVEL UNDER THE INTERNATIONAL PROTOCOLS.

SECOND, WE AGREE THAT THE SHIPOWNER LEVELS OF LIABILITY SHOULD BE BACKED UP WITH A COMPENSATION FUND, PAID FOR BY A FEE ON OIL, OF $500 MILLON PER INCIDENT. THIS BILL WOULD BE THE QUALIFIED AUTHORIZING LEGISLATION TO FINANCE THE FUND AND WOULD EXTEND COLLECTION OF THE 1.3 CENT PER BARREL FEE FOR THE FIVE YEARS EXTENDED. BUT WE ARE ALSO PROPOSING THAT THE FUND CAN BE RAISED TO A HIGHER PER INCIDENT LEVEL WHEN THE PRESIDENT DETERMINES THAT IT IS NECESSARY TO DO SO.

THIRD, CONSISTENT WITH LONG-STANDING EXECUTIVE BRANCH VIEWS, WE DO NOT BELIEVE THE COMPENSATION FUND SHOULD BE AVAILABLE FOR A BROAD RANGE OF SPECULATIVE OR THEORETICAL THIRD PARTY DAMAGES. HOWEVER, WE WOULD PROVIDE THAT THERE BE NO PREEMPTION OF REMEDIES AVAILABLE UNDER STATE LAWS FOR SUCH DAMAGES, EXCEPT TO THE LIMITED EXTENT NEEDED TO IMPLEMENT THE PROTOCOLS.

FOURTH, WE WOULD KEEP THE OUTSTANDING BALANCE IN THE TRANS ALASKA PIPELINE FUND AVAILABLE FOR UNCOMPENSATED COSTS ARISING FROM THE EXXON VALDEZ SPILL, PENDING RESOLUTION OF ALL CLAIMS.

FIFTH, WE PROVIDE IMPROVED ENFORCEMENT AUTHORITY UNDER THE CLEAN WATER ACT. THE PRESIDENT CAN ORDER REMOVAL TO AVOID

THREATS OF FURTHER POLLUTION. HIGHER CIVIL PENALITIES AND COURT-IMPOSED INJUNCTIVE RELIEF ARE AVAILABLE.

SIXTH, WE ESTABLISH A HIGH CIVIL PENALTY--UP TO $10 MILLON -- TO BE ASSESSED AGAINST SPILLERS IN THOSE CASES WHERE NATURAL RESOURCES ARE DESTROYED AND CANNOT BE RESTORED OR REPLACED. THIS PENALTY IS IN ADDITION TO THE SPILLER'S LIABILITY LIMITS.

WITH RESPECT TO A NUMBER OF OTHER ISSUES, WE SUPPORT THE HOUSE APPROACH TO "INLAND OIL BARGES", AS THEY ARE CALLED IN THE CLEAN WATER ACT. WE ARE AWARE THAT THERE ARE SOME WHO SUGGEST THIS CATEGORY OF VESSEL SHOULD BE AFFORDED SPECIAL TREATMENT DUE TO THE LOW MARGIN OF PROFIT ASSOCIATED WITH THESE OPERATIONS--AND WE ARE SYMPATHETIC WITH THAT. ON THE OTHER HAND, THESE BARGES OPERATE IN CONGESTED AND ENVIRONMENTALLY SENSITIVE AREAS AND PROTECTION FROM THEIR SPILLS MUST BE PROVIDED. WE THEREFORE SUPPORT THE COMPROMISE APPROACH OF H.R. 1465 IN APPLYING THE SAME LIABILITY LEVELS AS THOSE FOR SHIPS OTHER THAN TANK VESSELS.

WE ALSO SUPPORT YOUR APPROACH IN MAKING THE DOMESTIC FUND AVAILABLE TO STATE GOVERNMENTS FOR IMMEDIATE CLEANUP COSTS. WE VALUE THE STATES AS PARTNERS IN RESPONSE EFFORTS, BOTH ON OUR REGIONAL RESPONSE TEAMS AND AS INDEPENDENT AGENTS IN EFFECTING A QUICK RESPONSE TO OIL

SPILLS. THE FUND ADMINISTRATOR MUST HAVE CONTROL OVER THE DIRECT DRAW AND WE URGE YOU TO CONSIDER THE LESSER AMOUNT OF $50,000 AS AN INITIAL DRAW. THIS WOULD IN NO WAY AFFECT THE TOTAL AMOUNT THAT A STATE COULD ULTIMATELY DRAW IN INCREMENTAL LEVELS, AS LONG AS THE FUND ADMINISTRATOR COULD BE ASSURED THAT THE NECESSARY AGREEMENTS BETWEEN HIS OR HER AGENCY AND THE STATE ARE BEING EFFECTIVELY CARRIED OUT.

THE DEPARTMENT SEES NO NEED FOR THE PROVISION IN H. R. 1465 THAT "REQUIRES" THE GOVERNOR TO AGREE ON THE LEVEL OF CLEANUP. WE ARE COMFORTABLE THAT THE MECHANISM EMBODIED IN THE REGIONAL RESPONSE TEAMS, WHERE STATES HAVE A FULL VOICE IN THE LEVEL OF CLEANUP, IS SUFFICIENT TO ENSURE THAT STATE GOVERNORS' CONCERNS OVER ADEQUATE CLEANUP ARE MET. EVEN IN A CASE AS COMPLEX AS THE EXXON VALDEZ, WE ARE CONFIDENT THAT AGREEMENT CAN BE REACHED, AS IT ALWAYS HAS IN THE PAST.

THE IMPLEMENTATION AND ULTIMATE ADOPTION OF THE 1984 PROTOCOLS IS AN ESSENTIAL PART OF OUR PROPOSAL. WE MUST REMEMBER THAT WE MAY NOT ALWAYS HAVE THE RESOURCES OF AN EXXON WITH WHICH TO RESPOND TO A SPILL OR A U.S COMPANY WITH LARGE RESOURCES AGAINST WHICH WE CAN EFFECTIVELY PROCEED.

THE PROTOCOLS WERE NEGOTIATED IN 1984 WITH EXTENSIVE GUIDANCE FROM BOTH HOUSES OF CONGRESS. SIMPLY PUT, THE

PROTOCOLS PROVIDE HIGH LIMITS OF LIABILITY FOR SEAGOING TANKERS CARRYING PERSISTENT OIL IN BULK--$78 MILLION FOR SHIP OWNERS AND $260 MILLION PER INCIDENT FROM THE INTERNATIONAL FUND. THEY OFFER PROMPT AND CERTAIN RIGHT OF RECOVERY FOR BOTH PUBLIC AND PRIVATE VICTIMS OF OIL SPILLS AND THEY DEMAND COMPULSORY INSURANCE.

BESIDES PROVIDING A COMPREHENSIVE AND EFFECTIVE INTERNATIONAL REGIME, THE PROTOCOLS PROVIDE BENEFITS NOT AVAILABLE UNDER A PURELY DOMESTIC SYSTEM. THESE INCLUDE ENFORCEABILITY OF U.S. JUDGMENTS IN FOREIGN COURTS AND COVERAGE OF SPILLS AFFECTING U.S. WATERS FROM VESSELS IN INNOCENT PASSAGE (NOT CALLING AT A U.S. PORT). FURTHER, THE INTERNATIONAL FUND REMAINS LIABLE IF THE DISCHARGER HAS LEGITIMATE DEFENSES OR IS INSOLVENT FOR ANY REASON WHATSOEVER.

AS YOU KNOW MR. CHAIRMAN, HOUSE LEGISLATION HAS SUPPORTED THE PROTOCOLS SINCE 1984, AND THE ADMINISTRATION HAS VIGOROUSLY SUPPORTED THEIR INCLUSION IN EVERY HOUSE BILL SINCE THAT TIME. STATE GOVERNMENTS, INDIVIDUALLY, AND THROUGH THE COASTAL STATES ORGANIZATION AND THE NATIONAL GOVERNORS' ASSOCIATION, HAVE STRONGLY SUPPORTED THE PROTOCOLS, EVEN THOUGH THIS MEANT ACCEPTING LIMITED PREEMPTION OF STATE LIABILITY STATUTES WHERE NECESSARY IN EXCHANGE FOR THE BENEFITS OF THE PROTOCOLS.

THE INTERNATIONAL REGIME IS ALSO GOOD FINANCIAL INSURANCE. ASSUMING OUR FUTURE SPILL EXPERIENCE (EXCLUDING THE EXXON VALDEZ) REMAINS ABOUT THE SAME AS DURING THE PAST EIGHTEEN YEARS, OUR FINANCIAL RETURN WOULD JUST ABOUT EQUAL OUR CONTRIBUTIONS TO THE INTERNATIONAL FUND. A SINGLE CATASTROPHIC SPILL IN THE RANGE OF $150 MILLION IN AN EIGHTEEN YEAR PERIOD WOULD RESULT IN A NET ECONOMIC BENEFIT. OBVIOUSLY THE EXXON VALDEZ INCIDENT WOULD HAVE GENERATED SUBSTANTIAL NET BENEFITS TO THE U.S. FROM THE INTERNATIONAL FUND.

I WOULD ALSO LIKE TO ADD THAT OUR CREDIBILITY IN THE WORLD MARITIME COMMUNITY HAS BEEN CALLED INTO QUESTION BY OUR FAILURE TO RATIFY THE PROTOCOLS. SIXTY-NINE NATIONS NEGOTIATED THE 1984 PROTOCOLS. THE CONGRESS AND THE ADMINISTRATION SENT THE U. S. DELEGATION TO THE DIPLOMATIC CONFERENCE WITH TOUGH OBJECTIVES. AS BELIEF GREW THAT THE U. S. WOULD BECOME A PARTNER IN THE IMPROVED CONVENTIONS, MANY DELEGATIONS BECAME MORE FLEXIBLE AND THE U.S. GOAL OF AN INTERNATIONAL REGIME WITH HIGH LIABILITY LEVELS WAS ACHIEVED.

SOME HAVE EXPRESSED THE VIEW THAT THIS ESSENTIALLY DIPLOMATIC CONSIDERATION MAY NOT BE IMPORTANT. I THINK OTHERWISE. THE U. S. HAS BEEN A LEADER IN WORLD MARITIME SAFETY AND ENVIRONMENTAL NEGOTIATIONS. I BELIEVE THAT WE WILL PUT THAT POSITION OF LEADERSHIP AT RISK UNLESS WE MAKE

GOOD ON WHAT WAS CONSIDERED TO BE A PROMISE TO RATIFY THE PROTOCOLS IF OUR GOALS WERE MET.

MR. CHAIRMAN, THIS CONCLUDES MY STATEMENT. I LOOK FORWARD TO WORKING WITH YOU AND THE SENATE IN MOVING QUICKLY FORWARD IN ENACTMENT OF OIL SPILL LIABILITY AND COMPENSATION THAT WILL PROVIDE THOSE DAMAGED BY OIL SPILLS WITH SWIFT AND SURE RELIEF, AS WELL AS ADEQUATE FUNDS FOR CLEANUP AND RESTORATION OF OUR NATURAL RESOURCES.

THANK YOU

TESTIMONY OF BRIAN HOYLE

DIRECTOR

OFFICE OF OCEAN LAW AND POLICY

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL

AND SCIENTIFIC AFFAIRS

UNITED STATES DEPARTMENT OF STATE

BEFORE THE SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

MAY 11, 1989

Good Morning Mr. Chairman:

It is a pleasure for me to be here to testify in support of the Comprehensive Oil Pollution Liability Act which is being submitted by the Administration today. I will confine my remarks to those aspects of the Administration's bill and H.R. 1465 relating to the 1984 Protocols to the 1969 Convention on Civil Liability for Oil Pollution Damage (CLC) and the 1971 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND).

Mr. Chairman, the Department of State fully supports United States ratification of the 1984 Protocols to the CLC and FUND Conventions, and we believe that an essential element of domestic oil pollution liability and compensation legislation should be to provide for their implementation. The Protocols were negotiated under the auspices of the International Maritime Organization (IMO) in recognition of the fact that vessel source oil pollution is an international problem which requires an international solution. They establish an international vessel source liability and compensation regime which guarantees that all legitimate claimants will receive fully adequate, prompt and certain compensation for their damages. I would like to address the inherent difficulties the United States or any country would face in establishing a purely domestic liability and compensation regime that meets these criteria, and the manner in which the Protocols solve these problems. I would note that these problems apply to both existing U.S. federal and State liability and compensation statutes.

Following a tanker accident, a person suffering oil pollution damage who wishes to obtain compensation from the shipowner through the judicial system must first obtain jurisdiction over him. In a case like the EXXON VALDEZ this is no problem because the shipowner is a U.S.

corporation. However, in the case of foreign flag tanker owners, and there are many of these entering U.S. ports or transiting our waters every day, obtaining jurisdiction may be difficult or impossible because such shipowners may have no assets or agents within the United States. Without jurisdiction there is no way to compel foreign flag tanker owners to submit to our liability statutes or judicial process. Indeed, it is precisely for this reason, as well as lower costs, that same tankers are registered in and fly the flags of so-called "flags of convenience" states.

Assuming jurisdiction can be obtained, another problem associated with a domestic liability system such as the current U.S. system is the length, uncertainty and expense of litigation. Mr. Chairman, if I can echo an old adage,"justice delayed is justice denied". An excellent example of this is the 1978 AMOCO CADIZ incident. The $110 million judgment awarded only last year is being appealed and no claimant has yet to receive a penny in compensation for damages more than eleven years after the accident. Legal fees in the AMOCO CADIZ case will certainly run into the hundreds of thousands -if not millions- of dollars. Such fees could preclude litigation (if a contingency fee arrangement is not available) or could force claimants to settle for less than full recovery for valid claims.

Mr. Chairman, recovery of full compensation through litigation is further clouded by defenses available to tanker owners under domestic statutes. In the case of the United States, tanker owners may successfully argue that they can limit their liability under an 1861 federal statute commonly known as the Limitation of Liability Act, to the value of the vessel after an accident plus the amount the tanker owner would have earned for transporting the cargo on board. In the 1967 TORREY CANYON incident, the tanker owner successfully invoked this statute to limit his liability to the value of a $50 life boat and suit was abandoned in U.S. courts.

This federal statute may be held to control a tanker owner's liability even if the accident occurs in a state whose statutes provide for a higher liability limit or even unlimited liability. Athough the Limitation of Liability Act may not apply in all cases, in the only two cases we have found where the specific issue of the applicability of state liability limits was tested against the federal Limitation of Liability Act, the federal law was held to control. The Limitation of Liability Act would not serve to limit a tanker owners liability under the Federal Water Pollution Control Act. However, liability under the FWPCA is low ($150/ton) and the scope of damages to which liability pertains is limited to the Federal Government's cleanup costs and natural resource

damages. A number of State statutes are also limited to recovery for cleanup costs and natural resource damage. Under such statutes the government and third parties are left without a remedy for other damages.

Another uncertainty associated with reliance on a purely domestic liability regime is the difficulty of enforcing judgments in foreign courts. International law does not as a general matter require any country to enforce a judgment rendered by a court in another country. If such a judgment is honored it is based on comity, not on any internationally guaranteed right. Thus, even if litigation in U.S. courts is successful and a judgment is obtained against a foreign tanker owner, it could be difficult or impossible to get the country where the ship is registered or the owner is located to enforce it. I should note that at the present time the United States does not have bilateral or multilateral agreements with other countries relating to the enforcement of judgments.

A final problem associated with State domestic liability regimes is the difficulty in establishing financial responsibility requirements to which reputable marine insurance underwriters are willing to certify. Our understanding is that such insurers will not certify unlimited liability limits. A few years ago, when Florida attempted to compel certification

for unlimited liability, insurers refused and tanker owners would not enter Florida ports until State officials agreed not to enforce the requirement. Lack of certified financial responsibility creates substantial uncertainty for states as to the existence of adequate assets to satisfy a large judgment. In this regard, I would note that many vessels entering U.S. waters (roughly 36% in 1986--1081 tankers) are operated as single vessel corporations set up with very few real assets except the vessel itself. This is done for the obvious purpose of limiting the tanker owner's exposure. In 1980 only about 29% of such tankers were operated as single vessel corporations. So you see Mr. Chairman, the trend is toward corporations with less reachable assets, which decreases the certainty of obtaining full recovery.

Mr. Chairman, the primary concern that has been expressed regarding the Protocols is that they would require the preemption of State liability statutes, some of which provide for unlimited shipowner liability. Objection to such preemption is based on the theory that State governments and individuals should be able to sue a polluter for the entire amount of their damage or cleanup costs, without any limitation on amount. This is an attractive theory to the extent it can be relied upon to provide prompt, adequate and certain compensation to pollution victims. However, the problems I

have outlined with regard to jurisdiction, limitation of liability, scope of damages, enforceability of judgments and financial responsibility cloud the practical application of State liability statutes that are in theory unlimited in major pollution incidents. In addition, State compensation funds, although they would not be preempted by the Protocols, are clearly inadequate in size and scope to guarantee full recovery for all pollution damage in a major tanker spill.

Mr. Chairman, the liability and compensation mechanism contained in the 1984 Protocols represents a creative and effective and cost efficient solution to the problems I have outlined in respect of our current domestic regime.

The Protocols, in our view, would assure fully adequate coverage by increasing per incident compensation to roughly $260 million, a level sufficient to cover damages and cleanup costs even from catastrophic oil spills. In the unlikely event damages and cleanup costs exceeded Protocol coverage, the domestic fund, up to $500 million, financed by oil company contributions would assure full compensation from those profiting by the transport of oil. The Administration's bill will also contain a provision which will allow the President to waive this cap in order to respond to a truly catastrophic spill. The scope of coverage has been expanded so that

claimants who do not now have an effective remedy under existing domestic statutes would be able to obtain such compensation.

The Protocols provide a means for dealing with the difficult question of obtaining jurisdiction over the owners of a tanker which has caused pollution damage. They provide for international recognition of jurisdiction of the courts of any party based on incurrence of costs and damages, and a right of direct action against the shipowners insurance companies. Shipowners may assert only limited defenses under the Protocols thus eliminating many defenses currently available under existing domestic statute such as the Limitation of Liability Act. Furthermore, they provide that all parties must enforce resulting judgments (with narrow exceptions for cases such as fraud). By providing U.S. claimants with a means to obtain jurisdiction over foreign flag tanker owners and to enforce judgments against them, wherever they are located, the Protocols offer a remedy to one of the basic difficulties of a domestic system.

The Protocols provide for greatly enhanced certainty and speed of payment. They provide for financial responsibility, certified by reputable insurance companies up to substantially increased liability limits (roughly $550/gross ton to a maximum

of $78 million). By so doing, they provide that there will be assets (in the form of insurance) against which a victim can proceed. Claims which exceed shipowner liability are paid by an international fund with an impressive record. Average settlement is less than eight months from the time when complete documentation is submitted. Such a mechanism virtually eliminates the necessity for lengthy and uncertain litigation in major pollution incidents.

Mr. Chairman, there is one further benefit of the Protocols that is worthy of mention--low cost. Based on long term spill experience, the net cost to the United States of Protocol membership (the amount U.S. oil receivers would pay into the the international fund vs. the amount the U.S. would receive for spills occuring in our waters) would be minimal (about $5.3 million per year on average). However, a net cost of about $4 million per year -without any international coverage for U.S. spills - is expected if the U.S. implements domestic legislation without adopting the Protocols. This is because of the continuing U.S. contributions for spill costs in other parts of the world under the voluntary industry scheme (CRISTAL). Therefore, the incremental expected net cost to the United States of adopting the Protocols is only about $1.3 million per year. Moreover, a single catastrophic spill ($150

million in 1992 dollars) in U.S. waters such as the Exxon Valdez spill would change this net cost to a net benefit of about $4.5 million per year over an 18 year period compared to domestic legislation without the Protocols and continued CRISTAL contributions. Simply put, the fact that the Protocols are not now in force for the U.S. has cost us a very substantial amount of money, given the magnitude of the Exxon Valdez spill.

Mr. Chairman, in conclusion I would like to emphasize a point that Secretary Skinner and Admiral Yost made regarding the importance of participating in the Protocol regime from the perspective of U.S. leadership in the International Maritime Organization. The IMO is important to the U.S. in many ways, particularly in the area of environmental protection and of safety of commercial shipping. The U.S. should ratify the Protocols because they provide an excellent solution to an international problem that we cannot handle in a fully satisfactory manner by ourselves. As such they are clearly in the national interest. But in addition, U.S. ratification would justify the confidence placed in us by our negotiating partners, which in this case include our major allies, and it would maintain our credibility and leadership in the IMO, where there is important future work to do in this and in other fields.

Mr. Chairman, the Department of State fully supports implementation of the Protocols as provided by the Administration's bill, and we are gratified that H.R. 1465 also contains similar implementing provisions. We commend your Committee for its leadership on this important subject over many years. We look forward to rapid enactment of comprehensive domestic liability and compensation legislation that implements the 1984 Oil Spill Protocols.

Thank you Mr. Chairman. This concludes my formal remarks and I will be pleased to respond to any questions.

Testimony

of JERRY A. ASPLAND

President, ARCO Marine, Inc.

on Behalf of the

AMERICAN PETROLEUM INSTITUTE

on H.R. 1465

OIL POLLUTION LIABILITY AND
COMPENSATION ACT OF 1989

Before the

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

of the

HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE

Washington, D.C.
May 11, 1989

Mr. Chairman, my name is Jerry Aspland. I am President of ARCO Marine, Inc. and I am here today representing the American Petroleum Institute (API), a trade association representing over 200 member companies involved in all aspects of the oil and natural gas industry, including exploration, production, transportation, refining and marketing. I welcome this opportunity to comment on the proposed Comprehensive Oil Pollution Liability and Compensation Act (H.R. 1465).

Over the past 15 years, API has strongly favored and vigorously advocated a comprehensive approach providing the financial resources and response capabilities needed to deal immediately with any oil spill from any source in any U. S. navigable waters. We have repeatedly expressed to this Subcommittee and to the full Merchant Marine and Fisheries Committee our support for fair and comprehensive federal legislation covering oil spill liability and compensation. The tragic oil spill in Alaska's Prince William Sound underscores the need to move ahead with such legislation without further delay.

We want to assure you at the outset, Mr. Chairman, that API stands ready to provide all the assistance we can to your Subcommittee to achieve this objective and to establish a single federal regime that will eliminate the overlaps, conflicts and deficiencies of existing oil spill compensation and liability

arrangements. API believes that sound legislation can and should be enacted this year and that we should proceed accordingly.

The fundamental premise of oil spill compensation and liability arrangements should be that all legitimate claims must be paid, and all claimants who have incurred actual losses must be compensated to the full extent of those losses. Therefore, API believes comprehensive federal oil spill liability and compensation legislation should incorporate four fundamental principles:

First, the spiller should be "on the front line," responsible for removal costs and damages directly resulting from the spill, up to the applicable liability limit.

Second, a reasonably sized fund should be created through contributions from companies that handle oil to supplement the cost of removal and compensation for direct damages over and above the liability of the spiller.

Third, all oil spill removal costs, economic losses directly resulting from the discharge and actual costs incurred to restore or replace environmental losses should be compensated.

Fourth, the comprehensive federal regime should be the only liability system for a discharge of oil into the marine environment.

H.R. 1465 incorporates the first two of these principles. The remainder of our statement will discuss how H.R. 1465 can be improved to reflect the remaining two principles which are so important to enactment of effective oil-spill liability and compensation legislation.

Furthermore, the appendix to our statement identifies a number of other important issues and proposes several amendments which, if adopted, will substantially improve the thrust and application of the legislation. We commend these to your attention.

Scope of Damages

API supports legislation making the responsible party liable for removal costs and for all direct and actually identifiable economic damages. These would include loss of revenue for directly impacted businesses and costs actually incurred by the federal or state governments in restoring or replacing damaged natural resources, as well as the costs of studies or plans to restore or replace such damaged natural resources.

The fund created by the legislation should be drawn upon to pay for cleanup costs and proven damages after insurance coverage has been exhausted. However, the fund should not pay for speculative damages. An example of speculative damages would be

the media requesting compensation for overtime paid to cover an oil spill.

As presently drafted, the legislation limits the liability of a responsible party to the payment of oil-spill cleanup and removal costs and other specified and actually identifiable economic damages. However, Section 102(e)(4)(a) provides that the measure of damages in the case of injury to, destruction of, or loss of natural resources shall not be limited to the sums which can be used to restore or replace such resources.

Since claims for indirect or speculative damages could not be challenged, and could quickly diminish the fund's reserves, API opposes provisions to compensate the federal or state governments, as trustees of natural resources for such damages. The bill provides for such compensation for resource damage where no actual replacement or restoration is involved. Such claims for indirect or speculative damages, which could be asserted employing arbitrary procedures, could not be challenged by the vessel owner or by the federally created fund, nor would they be subject to meaningful judicial review. This open-ended legal burden can be avoided by limiting claims to direct and actually identifiable economic damages.

Consequently, API urges that Subparagraph (a) of subsection 102(e)4 and paragraph (5) of subsection 102(e) be deleted. These provisions would expand the scope of damages to be assessed

against the responsible party and the fund well beyond defined, specific criteria into the area of undefined and speculative damages.

In this same respect, Section 102(e)(6) should not include reference to Section 107(f)(1) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). That section provides that sums recovered to pay for damages of natural resources "...shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources...but the measure of such damages shall not be limited by the sums which can be used to restore and replace such resources." (emphasis added.)

This open-ended "claim check" would encourage remote and speculative claims, as well as class action suits, bearing little or no relation to actually identifiable economic damages or to the administrative criteria upon which claims are based. This reference to CERCLA should be deleted to assure that claims asserted under this legislation are clearly defined and adequately circumscribed.

Additionally, H.R. 1465 states that the fund will be used to pay for removal costs and damages described in Section 102(a)(2) and for such costs and damages not otherwise compensated under the act. The implications of this broad, open-ended provision are serious. It suggests that the fund is available to pay for

whatever type claim might arise as the result of a discharge of oil, including those which are based on purely administrative criteria. This could generate remote and speculative claims and class action suits with little or no relation to actually identifiable economic damages. In effect, this provision provides that "damages" will cover everything defined in the act, plus whatever else might be asserted. As such, we urge that Section 102(a)(2) be modified to provide for payment of direct removal costs and damages, economic losses and other direct costs which have not otherwise been compensated for by the responsible party.

Need For A Single, Comprehensive Fund

API has consistently stressed the need to establish a single, comprehensive fund to supplement the liability of the responsible party and to replace the existing patchwork of state and federal liability laws and funds.

Under Subsection 109(a) of the bill, an action for damages specified under Section 102(a)(2) must be brought in accordance with the requirements of this bill. This language would not preclude other actions under state law, admiralty law, or common law to recover damages not specified under Section 102(a)(2). In this sense, it is open-ended and provides no protection against such legal actions. Accordingly, it is essential that Section 109(a) be revised to provide that:

"Except as provided in this Act, an action may not be brought in a court of the United States or of any state or political subdivision thereof, for any removal costs, damages or other relief resulting from a discharge of oil from a vessel or facility."

API agrees that individual states should be able to maintain funds for purposes other than compensation for removal costs and damages resulting from a federally covered discharge. States may need to maintain funds to pay for training, research and equipment purchases and for cleanup and removal of land spills. However, any state program financed through a fund must be fully coordinated with and in support of the National Contingency Plan. Section 109(b), however, would sanction the continued existence of state funds to pay for removal costs and damages that would also be covered by the federal fund. Under this provision, double taxation would be sanctioned and confusion over jurisdiction and application would result.

To clarify this matter and eliminate confusion, API recommends that subsection 109(b) be redrafted as follows:

"Nothing in this Title or Section 9509 of the Internal Revenue Code of 1954 shall affect the authority of any state to establish or continue in effect and to require any person to contribute to a fund, except such a fund

may not be used to compensate any person for removal costs and damages resulting from a discharge of oil from a vessel or facility subject to this Act."

The fact that states would be granted an automatic $100,000 draw on the federal fund to pay for immediate removal costs is further reason for not having states accumulate funds for this same purpose.

Subsection 109(c) provides that nothing in the bill shall affect the authority of the United States or political subdivision to impose any fine or penalty for any violation of law relating to a discharge or threat of discharge. This provision is an open invitation to federal, state, and local jurisdictions to levy fines and penalties without regard to the culpability of the responsible party, and become a means for political subdivisions to collect for damages or claims regardless of whether they were compensable under federal law. Consequently, the provision should be deleted or rewritten to exclude fines or penalties (whether civil or criminal) established by a state and to identify applicable criteria in assessing federal fines.

Conclusion

In conclusion, API supports comprehensive oil-spill legislation which will bring under a single umbrella all aspects

of oil-spill liability and compensation to ensure that all legitimate claims are paid, and all claimants who have incurred actual losses are compensated to the full extent of those losses. This legislation is long overdue.

It is essential, however, that any such legislation clearly define the liability of each shipowner and facility owner, as well as circumscribing the scope of all claims which can be made on the responsible party and on the fund. Compensable claims should be limited to oil spill removal and damage costs directly resulting from the discharge, proven economic losses, and costs actually incurred to restore or replace environmental losses.

Just as importantly, ship owners and facility owners need to operate under a single set of rules and not be subject to the laws and regulations of a variety of jurisdictions. A uniform, comprehensive regime will enable a responsible party to know his legal status and responsibilities in the event of a serious oil spill.

We offer these observations and the attached comments in a sincere effort to be constructive and to assist in developing the best possible oil spill liability and compensation legislation. API stands ready to do all we can to work with this subcommittee in formulating legislation which will meet this objective.

ADDITIONAL API COMMENTS ON H.R. 1465

API believes that provisions of H.R. 1465 should be clarified by incorporating the following amendments:

o The definition of "discharge," under Section 101, specifically excludes natural seepages as a discharge. API endorses this provision and believes that this exclusion should be extended to cover tar balls and oil globs. We support using the fund to cover claims arising from so-called "mystery spills", that is, sudden and invasive spills or discharges from unknown sources. However, tar balls and oil globs, a chronic condition in some areas, are not excluded under the definition of "discharge." Thus, removal costs of such discharges appear compensable. This could represent a virtually continuous, unquantifiable drain on the fund. The basic principle underlying the creation of the fund is to compensate claimants for costs and damages in excess of those compensable by the party responsible for oil spills. Consequently, we urge that discharges from unknown sources be covered only to the extent that sudden and invasive spills clearly exceed the chronic pollution threshold present in any given area.

o The definition of "onshore facility" includes motor vehicles and rolling stock. Coverage of spills from such

equipment clearly exceeds the range of coverage originally contemplated by this legislation. Inclusion of motor vehicles and rolling stock immediately raises the question of liability limits which operators of such equipment must carry. This is not addressed under Section 102(c)(1). Therefore the reference to vehicles and rolling stock should be deleted.

o The definition of "removal costs" should be clarified to ensure that the cost of actions associated with vessel salvage -- or those taken to ensure the safety of a vessel or facility -- are not included as costs compensable under this legislation. It is important to make a distinction between actions taken "to prevent, minimize or mitigate oil pollution where there was a substantial threat of a discharge of oil" and those which any conscientious owner or operator would take under the circumstances, even if there were no danger of pollution.

For example, lightering a vessel stranded on a bar to allow it to be towed free or placing a vessel with a steering failure under tow would be actions which any responsible owner would take given the situation. The costs associated with such actions should not be compensable under H.R. 1465.

Therefore, we suggest that the definition of "removal costs" be expanded by adding, at the end, these words: "but exclude costs which any prudent owner or operator would have taken in the

circumstances to ensure the safety of the vessel, facility or port, its personnel or -- in the case of a vessel -- its cargo."

o Subparagraph 102(a)(2)(B)(iii) provides compensation for damages for loss of subsistence use of natural resources. Section 102(a)(2)(B)(v) provides compensation for loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources. Compensation for such damages arising as a direct result of a pollution incident, as presently provided for in the legislation, appears reasonable. However, the recovery of such losses should be for a specified time period. The legislation proposes to cover the loss of taxes, royalties and rents by governmental entities for a period not to exceed one year. Correspondingly, compensation for loss of subsistence and recovery of lost profits or impairment of earning capacity should also be limited to a one-year period. Without a specified time limit, such losses become speculative and could disregard alternative subsistence or income sources developed following a discharge.

o Under Subparagraph 102(a)(2)(B)(v), it is important that compensation for damages associated with loss of profits be limited to losses of net profits. Therefore, the reference in the first sentence should be "to the loss of net profits" and not simply "to the loss of profits."

o Subparagraph 102(c)(1)(A), in defining the liability for tankers, does not include non-self-propelled vessels of less than 3,000 gross tons carrying oil in bulk on the interior waters of the United States. In terms of possible damage, API sees no basis for establishing substantially lower limits of liability for barges of less than 3,000 gross tons.

o Paragraph 107(a)(4) provides that any vessel in U.S. waters without the necessary evidence of financial responsibility shall, along with its oil cargo, be subject to seizure. API believes the vessel owner or operator should be solely responsible for having the necessary documentation or evidence of financial responsibility on his vessel. The cargo owner should not be penalized and should be able to proceed against a vessel owner in the event the vessel is seized and be allowed to such return of the cargo. We suggest this section be amended to relieve the cargo owner of any legal liability in the event the United States proceeds against a vessel owner or operator for not having evidence of financial responsibility.

o Title III of H.R. 1465 outlines provisions to implement the International Civil Liability Convention and Fund Convention and their respective Protocols. These instruments, which involve international oil spill liability and compensation arrangements, have not been ratified by the Senate. There are questions as to how these complex arrangements would interface with domestic oil spill law under consideration and the precedence they would have.

As examples, the Civil Liability and Fund Conventions and their respective Protocols are limited solely to ship related oil spills. Moreover, they would only cover spills of persistent oils which are defined as crude oil, fuel oil, heavy diesel oil and lubricating oils. H.R. 1465 covers both crude oil and petroleum product spills from offshore drilling and producing facilities, petroleum facilities adjacent to navigable waters and non-seagoing barges as well as from both U.S. and foreign flag tankers. Consequently, API suggests that Title III be deleted. The provisions of these Conventions and Protocols should be incorporated into domestic law, if and when ratified. To attempt to enact legislation implementing these instruments in a piecemeal approach or in advance of their ratification is ill-advised.

STATEMENT

OF

THE AMERICAN WATERWAYS OPERATORS (AWO)

ON

OIL POLLUTION LIABILITY, CLEANUP
AND COMPENSATION LEGISLATION

presented by

AUSTIN P. OLNEY
PARTNER
LeBOEUF, LAMB, LEIBY & MacRAE
WASHINGTON, D.C.

and

MEMBER, AWO OIL SPILL
TASK FORCE

before

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
COMMITTEE ON MERCHANT MARINE AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES

May 11, 1989

My name is Austin P. Olney. I head the maritime practice group at the law firm LeBoeuf, Lamb, Leiby and MacRae. I am appearing today once again on behalf of the American Waterways Operators (AWO). AWO represents the inland, coastal and ocean-going tug and barge industry.

AWO members serve 41 states on the 25,000 miles of waterways on the inland rivers, and the Atlantic, Gulf, and Pacific coasts and provide service in the noncontiguous trades to Alaska, Hawaii, and the Caribbean. Petroleum and petroleum products account for about 39 percent of the commodities moved by our industry. These cargoes are carried in tankbarges which must meet stringent U.S. Coast Guard design and construction standards and are subject to thorough periodic inspections by the Coast Guard. The personnel who run the tugboats and the crews which handle cargo transfers are subject to a comprehensive training, licensing and certification regime also administered by the Coast Guard.

The tragic spill in Prince William Sound has stunned all of us in the maritime industry, and we deeply sympathize with those whose lives have been disrupted by the spill and the clean-up operation. All of our shared concern generated by this tragedy should be turned promptly to the task of learning the cause of the accident, taking measures to prevent the recurrence of such an accident, improving the technology and the capability to contain spills if they occur, and streamlining and improving current laws of oil pollution liability and compensation to ensure fair and effective claims resolution. Emotion can hinder this. Only reason can

provide the assurance that proper lessons will be learned to protect the future. All of these areas of inquiry are important, but it is to the latter issue that we wish to address our comments at this hearing.

The Alaskan spill gives Congress the opportunity to contrast the effectiveness of existing oil spill liability schemes with the one proposed by this Committee for the last fifteen years. The current system is cumbersome. Our members are subject to a variety of federal and state laws, which may or may not apply depending upon where they are operating and what type of cargo they are handling. At the federal level, the shipowner is subject to strict liability for clean-up under the Clean Water Act. Under certain circumstances, shipowners may also be subject to strict liability for clean-up and third party damages under the Trans-Alaska Pipeline Authorization Act, the Deepwater Ports Act, and the Outer Continental Shelf Lands Act Amendments. Twenty-four states, including Alaska, have strict liability oil pollution statutes for clean-up costs and third-party damages. The federal laws do not preclude claimants from using these state laws or common law remedies.

The problems with overlapping and duplicative response funds are also evident in the Alaskan spill. At the federal level, the Coast Guard apparently concluded that it was limited in its response capacity by the amount of money in the fund available for clean-up response under section 311 of the Clean Water Act; yet the specialty fund created by the Trans-Alaska Pipeline Authorization Act and administered by the Interior

Department had available about $250 million to respond to this very type of oil spill.

The clearest lesson so far from this spill is the need for a single, comprehensive oil spill liability and compensation regime backed by an adequate federal fund which replaces existing funds. Confusion about availability of the fund established by the Trans-Alaska Pipeline Authorization Act could have been avoided by having a single, all-purpose fund. The April 7, 1989 New York Times [Attachment A] reports of the confusion and controversy seen by legal experts and law professors over the simultaneous application of these different legal regimes. This cumbersome system benefits no one. The confusion caused by overlapping legal regimes hinders the process of establishing liability and resolving claims.

To resolve these obvious problems, AWO has supported in the last several Congresses and continues to support comprehensive federal legislation which:

- Establishes a single strict liability regime for shipowners, facility owners, and cargo owners, backed by a single fund;

- Supersedes other similar federal laws and completely preempts state oil spill liability laws;

- o Provides compensation for clean-up costs, demonstrable economic losses suffered by property owners and businesses as a direct result of a spill, and the actual cost of restoring, replacing, or rehabilitating natural resources;

- o Sets reasonable limits of liability so that the vessel owner is liable in the first instance with the balance of the liability borne by the cargo interests through a fund financed by a fee on oil shipments; and

- o Requires mandatory insurance or other forms of financial responsibility to cover the liabilities created by the legislation.

The bill, H.R. 1465, introduced by Chairman Jones and many members of the Merchant Marine and Fisheries Committee, for the most part incorporates these elements and significantly improves the current system of conflicting and overlapping federal and state regimes. The objective of uniform, fair, and efficient compensation is, however, jeopardized by incomplete preemption of state law and certain ambiguous damage provisions which may invite speculative claims.

Preemption

Full preemption of state law is essential to the objectives of the comprehensive oil spill regime. Twenty-four states have oil spill liability laws. They are similar to the bill in many respects; they impose strict

liability on shipowners and facility owners. They generally recognize the same types of recoveries for clean-up and removal actions. The disparities lie in two areas: the definition of recoverable damages and the absence of limitation of liability in twenty-two of the twenty-four states.

H.R. 1465 preempts state laws to the extent they duplicate clean-up and damage awards recognized under the comprehensive bill. State laws often recognize similar theories of damages, but use very different terminology. Partial preemption of state law creates semantic differences which will inhibit claims resolution in a litigation quagmire without materially improving the rights of bona fide claimants.

The failure to preempt completely state law also has the effect of removing the limits of liability for the shipowner. Since twenty-two of the twenty-four states do not recognize limitation in their laws, H.R. 1465 appears to allow state claims to "wrap around" or exceed the limits for claims brought under the proposed federal law. This undermines the fundamental design of the legislation which has been supported by AWO and the oil industry. Limitation for the shipowner is not a limit on claims. It establishes the point at which the payment of claims shifts from the vessel owner to the cargo owner's previously established fund. Limitation is the device which allows the risk to be allocated between the shipowner and the cargo owner. Limitation facilitates the procurement of insurance at reasonable rates for shipowners, and it provides the cargo interests with a direct stake in the transportation of cargo and a strong

incentive to use those transporters who maintain high standards of performance.

We recommend that H.R. 1465 state explicitly that the bill provides the exclusive remedy for any costs of clean-up and removal of oil and any damages sought in connection with a discharge of oil or a substantial threat of discharge of oil. We would be pleased to suggest specific language to amend the current preemption section.

Damages

The Alaskan spill has dramatically demonstrated the magnitude of economic and environmental injury that can occur. EXXON has accepted responsibility for compensating these losses. The tug and barge industry has always been willing to provide compensation for economic loss and environmental restoration and replacement.

We believe that the intention of the Committee has been to confine recoveries to provable claims directly resulting from a spill. The wisdom of this approach is borne out in a review of the recent decision on damages in the AMOCO CADIZ case. That case was mired down by exaggerated and remote claims. Allowing claimants with an indirect or attenuated relationship to a spill to share on an equal basis the finite amounts of available funds with those having closely connected claims can only disadvantage those most directly injured. We would like to work

with your staff to fine tune the economic damages provisions so as to discourage the filing of remote and speculative claims.

AWO has long supported payment to the federal and state trustees for studying natural resource injury; developing remediation plans; and rehabilitating, restoring and replacing injured natural resources. However, section 102(e)(4)(a) states that these types of damages are not to be limited by the amounts of money that can be used to restore, replace or rehabilitate the injured resources. Damages beyond that point, of a speculative nature, are to be considered. This section extends natural resource damages above and beyond direct damages by employing complex computer modeling. The end result of this theoretical exercise would be decidedly untheoretical. It could make the government's added natural resource "cost" calculation virtually invulnerable to legitimate and well-established legal defenses. The utility of these added assessments, which have the potential to be very large, is also highly questionable because the assessments would go to the general treasury, not to claimants or to restoration efforts.

AWO recommended language in the last Congress which we would like to offer once again to the Committee for consideration. We believe our approach will accomplish tangible results for environmental restoration and will avoid costly diversion of funds for theoretical ends.

Before concluding my statement, there are several issues which have been raised in the context of the Alaska spill which have not been part

of the recent debate on comprehensive oil spill legislation. The most prominent one is the "federalization" of oil spill clean-up response. The tug and barge industry has always favored putting the spiller on the front line. It is best for the vessel owner to take immediate responsibility to clean up a spill. Under existing law this must be done in coordination with federal and state officials. This has worked well in the past. As most spills fortunately have not been catastrophic, clean-up has been prompt, efficient, effective, and financed entirely by the vessel owner. Interposing the federal bureaucracy between the vessel owner and initiation of clean-up will only insure delay and loss of precious response time.

This is a complex bill, and we have several additional proposed changes of a technical nature which, with your permission, we would like to take up with your staff prior to mark-up.

The Alaska spill has also prompted numerous suggestions that Congress establish new requirements intended to enhance vessel "safety." These proposals include double hulls, increased crew complements, revised pilotage requirements, and carriage on board of booms, skimmers, and other clean-up equipment. The government has in place a comprehensive, carefully crafted safety regime that is backed by company-specific safety programs. We must first of all make sure that we understand the actual causes of the EXXON VALDEZ spill and ensure that any new initiatives address those causes. We must avoid measures that are cosmetic or

which interfere with existing important marine safety and environmental programs.

Mr. Chairman, we believe that the events in Alaska validate the efforts of this Committee in the past years to enact a single, comprehensive oil spill liability and compensation law. While the tragic spill in Alaska has propelled the Congress forward with a new sense of urgency, we have been impressed with the measured, objective tone which you set at the first hearings on the Alaska spill. The ability to resolve some of the issues which we raised in our testimony will require great care, and we appreciate the constructive atmosphere you have created for the consideration of this legislation. Thank you for the opportunity to present our views.

ATTACHMENT A

THE NEW YORK TIMES **THE LAW** FRIDAY, APRIL 7, 1989

Liability for Exxon Oil Spill: Untested Waters

By MATTHEW L. WALD

The oil that is causing widespread damage in Prince William Sound is raising new legal questions. Already 14 suits have been filed, and the Exxon Corporation, whose tanker Exxon Valdez ran aground on March 24, is likely to resemble a legal voodoo doll before all the claimants are finished taking aim.

A patchwork of maritime and environmental laws covers oil spills, and lawyers from Washington to Anchorage are also combing through Federal and Alaska statutes that might apply. One authority, Fred Pressley, a lawyer with the Coast Guard's Maritime International Law Division, counts three major sets of rules for coping with spills, but adds, "The way those regimes fit together is, to my knowledge, unresolved by any court."

The statutes dealing with cleanup of such spills are fairly clear. But the extent of Exxon's liability to those who suffer — the fishermen, fish packers, restaurants, owners of tourist-dependent business — is far from settled, and experts predict that this spill will establish new precedents in the field.

'Most Sensitive Question'

"That is the most sensitive question in the law right now," said Oliver A. Houck, a law professor at Tulane University who is an expert on maritime and environmental law. "It's the sleeper in all the liability questions."

The basic law covering oil spills in American waters is the Clean Water Act, a 1987 statute heavily amended in 1978. It requires tanker owners to pay up to $150 per ton of the vessel involved in a spill for cleanup, without regard to fault. For the Exxon Valdez, that would come to $32 million. In cases of reckless misconduct, the limit is lifted.

Thomas J. Schoenbaum, an expert in admiralty and environmental law who teaches at the University of Georgia Law School, said reports of the tanker captain's drinking suggest that recklessness was involved. A blood alcohol test administered to the captain, Joseph J. Hazelwood, showed impermissible alcohol levels nine hours after the ship ran aground.

"If the facts are correct, there's a pretty good chance this is highly reckless behavior, and Exxon is responsible for it," he said.

In Alaska, a second Federal statute also applies: the Trans Alaska Pipeline Act, a 16-year-old law that authorized construction of the pipeline and set conditions on oil shipments. It requires a shipper to pay the first $14 million in damages and sets up an industry-financed fund to pay the next $86 million, regardless of fault, but caps cleanup costs at $100 million.

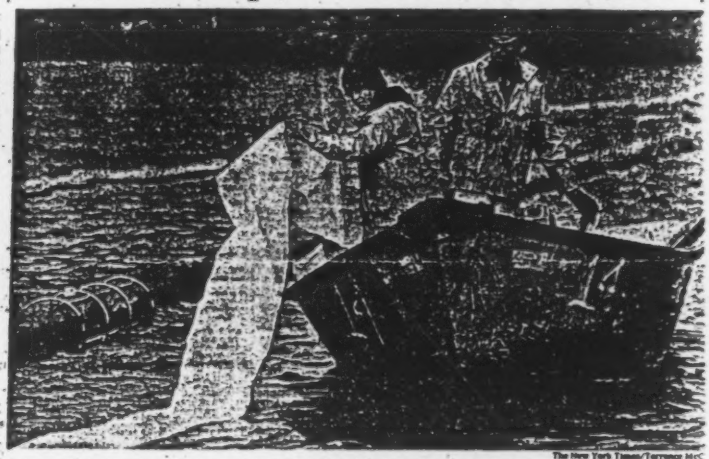
The relationship of the fund and the cap to the provisions of the Clean Water Act are not spelled out, although many experts think that the Clean Water Act will supersede the cap in the pipeline law.

Then comes damages to others. Under admiralty law, Professor Schoenbaum noted, a 1927 Supreme Court ruling, in Robins Drydock and Repair Company v. Flint, establishes the principle that "there is no recovery for economic loss."

If fish cannot be served in restaurants, or if sellers of bait and tackle shops lose business as a result of the spill, the 1927 ruling suggests that owners of the businesses could not recover, he said.

In 1974, however, the Supreme Court ruled in a case growing out of a California oil spill, Union Oil Company v. Oppen, that fishermen were an exception and could recover, Professor Schoenbaum said.

Also, the pipeline law has a provision, thus far untested, providing for damages arising from a spill including "injury to or destruction of natural resources" and "loss of use of natural resources," as well as "loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources."



The New York Times/Terrence McC

Fishermen placing absorbent material in Prince William Sound to soak up oil spilled from the Exxon Valdez. The spill and Exxon's liability have raised a host of legal questions.

A patchwork of maritime and environmental laws applies.

Who Can Collect Damages?

The law does not say precisely who can collect damages under the clause. One lawyer involved in the case, Andrew P. Miller of the Washington, D.C., firm of Dickstein, Shapiro & Morin, said his firm was proceeding under ordinary state negligence and liability laws because the procedures under the pipeline law were cumbersome and required a detailed assessment of damages.

Mr. Miller, whose firm is working with an Anchorage firm, Ashburn & Mason, added, "The farther away you get from the water's edge, the more difficult it is to recover."

A key question is what Exxon will be willing to pay. Frank Iarossi, president of Exxon Shipping, the tanker's owner, declared shortly after he arrived in Valdez that his company would pay for the damage, and later in newspaper advertisements, Exxon affirmed that it would accept its "obligations." But Leo McLean, a company spokesman Houston, said in response to a qu tion Wednesday, "I have not seen elaboration that tries to get it dow specific kinds of claims," addi "We're just not in a position at t time to try to be any more specific.

Still, L. G. Rawl, chairman Exxon, testified yesterday before Senate Committee on Commerce, S ence and Transportation, "Ex takes full responsibility and has d so from the beginning."

Checks to Fishermen

The lawyers are proceeding a there is no guarantee. "They've s "We will pick up all those costs said David Ramseur, a spokesm for Alaska's Attorney General, Do las B. Baily. Mr. Ramseur, who is a the spokesman for the Govern Steve Cowper, added, "That's a co pany spokesman speaking, so whe gets to the lawyers, there's probal going to be a difference." But noted that Exxon had already open a $10 million bank account in Cordo and has already begun writing chec to herring fishermen to cover th expected earnings this year, based their last three years' tax returns.

Representative Gerry E. Stud whose Massachusetts district w threatened by the wreck of the Ar Merchant 10 years ago, has be

proposing a national law on oil spills that would establish a standard for liability and make sure money was available. "Common sense says you want a uniform national system," he said. The bill has been repeatedly approved by the House and once by the Senate, but it has foundered over whether it should pre-empt state laws.

There are also other thickets. Under Federal law, Professor Houck noted, the Federal and state governments assume the role of trustees for wildlife, with the Federal Government acting for migratory species and the state governments acting for stationary ones. The governments can sue for damage to those "resources." But fixing the value is difficult.

A salmon might be worth what it would bring in the market, but what is the value of an otter? This assumes that the parties in such a case can agree on how many animals died, and also on how long the populations will take to re-establish themselves.

There is also the issue of fines. The Clean Water Act maximum is $50,000, an insignificant sum. Alaska statutes, however, call for a fine of up to $2.50 per gallon spilled, which could mean a $25 million fine against Exxon, according to Mr. Ramseur.

TESTIMONY OF THOMAS JAMES
GENERAL COUNSEL, LOOP INC.
BEFORE
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
COMMITTEE ON MERCHANT MARINE AND FISHERIES
U. S. HOUSE OF REPRESENTATIVES
MAY 11, 1989

Mr. Chairman and members of the subcommittee. My name is Tom James. I am the General Counsel of LOOP INC. LOOP owns and operates the Louisiana Offshore Oil Port, the only deepwater port licensed by the U. S. Department of Transportation pursuant to the Deepwater Port Act. That law originated in this committee and was enacted in 1974. We offload crude oil from large tankers at our terminal 18 miles off the Louisiana coast in the Gulf of Mexico, beyond the limits of United States territorial waters. After offloading we transport the crude oil by pipeline to shore where we have underground storage facilities capable of storing 40 million barrels of oil. Our onshore storage facilities connect to crude oil pipelines that distribute the oil to refineries on the Gulf Coast and in the midwest.

LOOP's offshore terminal and pipeline operations are subject to detailed safety regulation under the Deepwater Port Act as implemented in Coast Guard regulations. We are also subject to extensive environmental protection provisions contained in our license. Our throughput volume of approximately 750,000 barrels of crude oil per day is a significant percentage, approximately 15%, of the crude oil imported into the United States today. We have not, however, operated at a level approaching full capacity. The port was designed to receive up to 1.4 million

barrels per day, and we are not taking full advantage of the benefits which are offered by LOOP in preventing oil spills and minimizing their effect.

The most important point to be made in my testimony today is that the deepwater port concept of mooring large crude oil tankers in deep water away from the coast line and transporting it ashore by pipeline is a safe, more environmentally protective way of bringing crude oil into this country than any other available alternative. This committee recognized deepwater ports as an environmentally preferable method of bringing crude oil into this country when it drafted and reported out the Deepwater Port Act in 1974. Your foresight has been proven correct by our actual experience since LOOP commenced operations in 1981. Yesterday, LOOP's President, R. C. Thompson, presented detailed testimony before the Senate Committee on Commerce, Science and Transportation on LOOP's record and the spill prevention and response measures we are carrying out. I will not repeat that testimony here, but have made copies available to the subcommittee for review.

Since Congress, the Department of Transportation and LOOP, working together, have created a facility that minimizes oil spill risks associated with crude oil transportation and maximizes the ability to respond to spills if they do occur, LOOP's attributes should be kept in mind when considering legislation that could affect the economics of using deepwater ports. When the committee considers legislation like H.R. 1465,

which will impact the economics of transportation of oil by tankers and by LOOP, you need to consider whether the legislation will provide incentives or disincentives towards the use of an environmentally preferable transportation method, like deepwater ports. Unfortunately, our experience is that well intentioned environmental legislation has in the past imposed greater obligations on transportation through Deepwater Ports than on alternative transportation methods and has therefore provided disincentives to the use of LOOP. The points we want to address today are our concern over the level of the liability fund and method of funding it; our concern regarding inappropriate differences between the levels of liability and financial responsibility requirements applicable under the Act, and our serious concern over the lack of jurisdiction to enforce liability and financial responsibility requirements against operations occurring outside U.S. territorial waters.

From the time we commenced operation until late 1984, LOOP was the only facility in the U. S. which was required to contribute to a federal liability fund based on the volume of oil it received. Although we know that the risk of crude oil transportation through LOOP is much less than that associated with transportation through onshore ports Congress, actually imposed a 2 cents per barrel additional charge on shippers who selected the environmentally superior transportation method. This discrimination was ended in 1984 when Congress capped the Deepwater Port Liability Fund and suspended collections.

H.R. 1465, which contemplates a $500 million oil spill liability fund, would transfer the dollars accumulated in the Deepwater Port Liability Fund into the fund established by the new Act and would reinstitute collection of amounts to fund the new fund based on oil transported through LOOP along with all other oil refined in or transported into the United States. Under existing provisions of the Internal Revenue Code, persons who have contributed to the Deepwater Port liability fund will be given credit in the new fund for the full amount paid into the Deepwater Port fund together with the appreciation on that amount. This provision is fair and appropriate and should be retained.

We are, however, concerned that putting LOOP into the same fund pool with other less environmentally safe forms of crude oil transportation is inappropriate. We have spent a significant amount of money making LOOP an environmentally preferable transportation method and maintain $300 million in applicable insurance coverage. In determining LOOP's required contribution to the fund, consideration should be given to the fact that there is minimal risk that a claim will be made against the fund because of a spill at LOOP. We support one common liability fund but suggest that recognition of LOOP as the preferred way to transport crude oil should be given by reducing the fee on oil shipped through LOOP and reducing the financial responsibility requirement for tankers calling at LOOP. This would be a way to recognize the relative risks associated with different methods of oil transportation.

Further, we question whether a $500 million oil spill fund is appropriate or sensible. Why should we "lock up" $500 million and interest for the foreseeable future when required response costs in excess of a more modest amount can be borrowed from the treasury if the need arises? Loans could be repaid through recoveries from responsible parties and by reimposition of fees. Our concern over a large unobligated fund has been increased during the past two years during which time approximately $6.5 million has been transferred from the Deepwater Port Liability Fund in FY 1987 and 1988 to pay for increased government expenses totally unrelated to oil spill cleanup or liability at LOOP. If the government has decided that funds in the Deepwater Port Liability Fund in excess of about $5 million are "surplus" and available as general revenue for unrelated purposes, why should shippers through LOOP be required to pay into any fund amounts in excess of $5 million?

We welcome the provision of H.R. 1465 that eliminates the gap under existing law, where a vessel which lighters oil outside the deepwater port has a liability limit of $250,000, and a vessel which elects to use the deepwater port, a facility which is superior both in terms of spill risk and ability to respond if a spill does occur, has a liability limit of $20 million. However provision should be made for establishing a lower liability limit for tankers using the more environmentally protective deepwater port transportation system. The bill provides a way of lowering the liability limits for deepwater

ports by permitting the Secretary to lower the liability limits for deepwater ports. We strongly support retention of this provision, and suggest that the Secretary be given authority to also lower the liability limits for tankers using deepwater ports. Existing law concerning liability limits sends the wrong environmental message by imposing competitive disadvantages against LOOP and tankers using LOOP and favors the conventional tanker and offshore lightering operations. H.R. 1465 provides some hope for rectifying this problem.

The last area we want to address today is the lack of jurisdiction to enforce financial responsibility and liability requirements against vessels operating in the Exclusive Economic Zone which do not call at a Deepwater Port or enter U.S. territorial waters.

H.R. 1465 would reduce LOOP's required showing of financial responsibility by making it clear that responsible parties only need to demonstrate responsibility for their maximum liability in the circumstance where the liability limits are applicable, $75 million. This is a welcome clarification which we support. We also welcome the elimination of the existing liability limit disparity between vessels calling at the port and other tankers.

We are, however, seriously concerned that the bill's financial responsibility requirements and the provisions for enforcement of liability which the bill creates are applicable only to vessels calling at U. S. ports, vessels calling at deepwater ports and vessels in territorial waters. Thus the

bill's liability and financial responsibility provisions are not enforceable against tankers which discharge their cargo without entering territorial waters or calling at deepwater ports or U.S. ports. This situation will continue until such time as, if ever, the civil liability convention is ratified and enters into effect or other provisions are added to assure comparable enforceability.

For example, a 300,000 dwt tanker has the option of either calling at LOOP or lightering outside the territorial limits to small tankers for transshipment to onshore ports. If the tanker elects to call at LOOP, it will be required to demonstrate financial responsibility in the amount of $60 million (or a much larger amount under the Senate bill). If tanker elects to lighter, the House bill makes that vessel liable in case of a spill within the Exclusive Economic Zone, but provides no method for enforcement and does not require demonstration of financial responsibility unless and until the international convention on oil spill liability is ratified by the Senate. The small tankers taking the oil to shore would, particularly if under common ownership, be subject to much lower financial responsibility requirements than either tankers calling at deepwater ports, or deepwater ports themselves. The lack of enforcement provisions and requirements for financial responsibility demonstrations for tankers operating outside the territorial waters acts as a deterrent to deepwater port use, by permitting certain offshore operations to avoid the costs attendant to liability and financial responsibility. This disincentive to use the deepwater port to transport crude oil should be changed.

In closing, we want to complement this committee and its staff for doing a commendable job of dealing with the extremely complex issues involved in the establishment of a new, comprehensive oil spill liability regime. Recent events have provided incentives for all of us to take a new, hard look at these issues and it may well be that our current state of understanding may require substantial modification to the liability, financial responsibility and funding approaches which have been accepted in the past. Our closing thought is simple. As we develop a response and liability regime to provide adequate compensation mechanisms, we also need to consider whether we are establishing incentives for safe methods of crude oil transportation. Providing such incentives may or may not require substantial revision of the approach found in H.R. 1465. It is however imperative that detailed consideration be given to this issue while drafting the bill to be reported out by the subcommittee.

If the subcommittee has questions, I would be pleased to address them. LOOP would also welcome the opportunity to consult with the subcommittee regarding the incentive/disincentive structure to be provided by this legislation or any other matter as to which you think our expertise is relevant.

STATEMENT OF ERNEST BAYNARD
On Behalf of the Trans-Alaska Pipeline Liability Fund

BEFORE THE SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
OF THE HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE

Mr. Chairman,

My name is Ernest Baynard. I am a partner in the Washington, D.C. law office of Holland & Hart. We are legal counsel to the Trans-Alaska Pipeline Liability Fund.

The Trans-Alaska Pipeline Liability Fund is a private non-profit corporation. It was chartered by Congress in 1973 by Section 204 of the Trans-Alaska Pipeline Authorization Act. Under the Trans-Alaska Pipeline Authorization Act, the owner and operator of a vessel that spills TAPS oil, that is, oil that has been transported through the Trans-Alaska pipeline, is strictly liable without regard to fault for the first $14 million of damages that result from such spill. The Fund is strictly liable for that increment of damages in excess of $14 million up to a ceiling of $100 million for any one incident. Strict liability ceases when the oil is first brought ashore at a port under the jurisdiction of the United States.

In any case where strict liability is imposed and the damages were caused by another person's negligence, the owner and operator of the vessel and the Fund, as the case may be, are subrogated under applicable State and Federal laws to the rights of those claimants who have received compensation.

The Trans-Alaska Pipeline Authorization Act provides that the Fund be financed by a fee of five cents per barrel paid by the owner of the oil at the time the oil is loaded onto a vessel at the terminus of the Trans-Alaska Pipeline. After the Fund was fully financed at $100 million in September 1981, the fee was discontinued. The assets of the Fund have grown to approximatly $250 million through conservative investment of the original sum. If the amount in the Fund were to fall below $100 million, the five cents per barrel fee would be resumed.

The Trans-Alaska Pipeline Liability Fund is a private non-profit corporation whose assets were contributed by private entities. They constitute private property like those of any other private corporation and are subject to the Fifth Amendment protection of private property from being taken for public use without just compensation. I am pleased to note that this is recognized in Section 201 of H.R. 1465. That section provides that upon the termination of the Fund and after the payment of any outstanding claims, amounts remaining in the Fund shall be rebated pro rata to those who contributed to the Fund.

The repayment of the Fund's assets to its contributors is the equitable result. The Fund was created to provide payment for otherwise uncompensated damages, including cleanup costs, stemming from a specialized risk -- the shipment of oil from the terminus of the Trans-Alaska Pipeline in Valdez, Alaska to other ports in the United States. Congress determined that the owners

of that oil should, in effect, provide a fund which would be used as insurance against damages from the spill of their oil that might otherwise not be paid.

The purposes of H.R. 1465 would be much broader, providing compensation out of the Oil Spill Liability Trust Fund for any oil discharged from any vessel, an offshore facility, or an onshore facility. It is only fair that the contributions into the Oil Spill Liability Trust Fund be made by those whose activities pose the risks of damages for which that Fund could be liable. Taking the assets of the Trans-Alaska Pipeline Liability Fund and placing them in the Oil Spill Liability Trust Fund would result in an inequitable contribution by the owners of oil that was transported through the Trans-Alaska Pipeline. Such an inequitable result is rejected in H.R. 1465 and that rejection is commendable.

Thank you Mr. Chairman. I have included as part of my testimony copies of pertinent statutes, regulations and Fund procedures. I would be happy to answer any questions you might have.

May 11, 1989

TESTIMONY OF
C. G. GROAT

FOR THE
COASTAL STATES ORGANIZATION

ON
OIL POLLUTION LIABILITY AND COMPENSATION

BEFORE THE
SUBCOMMITTEE ON COAST GUARD NAVIGATION

OF THE
COMMITTEE ON MERCHANT MARINE AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES

May 11, 1989

Mr. Chairman, I am C. G. Groat, State Geologist of Louisiana and Director of the Louisiana Geological Survey in the Office of the Secretary of the Department of Natural Resources. I appreciate the opportunity to appear before you and the Subcommittee today to present the views of the Coastal States Organization (CSO) on H.R. 1465, the Oil Pollution Liability and Compensation Act of 1989. My statement reflects the position of the CSO, and while the State of Louisiana supports the need for effective oil spill legislation, I am not representing the State's position on all aspects of H.R. 1465.

The urgent need for comprehensive federal legislation to deal with the catastrophic as well as the chronic effects of oil spills in our Nation's waters is obvious. I'm sure I don't need to dwell on the recent events in Alaska to drive this point home. But as disastrous as the Exxon Valdez spill was, and continues to be, it is important to note that the daily, unheralded, "routine" spills that constantly occur, causing immense damage to individuals, businesses, wildlife and natural resources, must be addressed. With comprehensive oil spill liability and compensation legislation, not only should contingency preparation and response capabilities of the coastal States and the federal government be greatly improved, but the untold damages to the individuals -- fishermen, tourist industry people, and citizens, among others -- will be quickly and adequately compensated.

CSO supports enacting a comprehensive federal oil spill liability and compensation system, fully integrated with State oil spill programs. CSO also supports the ratification of the international oil spill liability and compensation protocols. These protocols were submitted to the Foreign Relations Committee in 1987, and remain pending before that Committee. We strongly support these two protocols, although we do so with an eye on domestic oil spill legislation that would, inter alia, implement the protocols. Our support for both the protocols and domestic oil spill legislation is based on our review of legislation considered in previous Congresses, including H.R. 1632 in the 100th Congress, an examination of the history of the major and minor spills that have affected our States' waters and shores, the amount of damage done, and the cost of cleanup. While CSO has some concerns regarding H.R. 1465, we remain committed to working with this Subcommittee and this Congress towards the enactment of comprehensive oil spill legislation.

CSO generally supports H.R. 1465, including the availability of the domestic fund for compensation of all claims for which the spiller would be liable (Sec.103). CSO found the restrictions and limitations placed on the domestic fund in previous bills untenable. These limitations were viewed as necessary protection for the fund from certain "speculative" claims. CSO is opposed to legislatively classifying a certain type of claim as speculative per se. Instead, CSO believes that the burden of proof requirements regarding the accountability of claims in implementing regulations will keep speculative claims in check.

We strongly support the full and unabridged preservation of State oil spill funds and the State's taxing authority to finance them (Sec. 109 (b)). The preservation of State authority to impose fines or penalties (Sec. 109(c)) is important. States must be able to maintain their authority to regulate the operations of oil facilities and vessels within their respective jurisdictions.

Requiring concurrent approval by the Secretary and the Governors of affected States concerning both the appropriate removal actions and completion of cleanup will aid cooperation between the States and the federal government on oil spill cleanup. The overall track record of State and federal officials agreeing on when "clean is clean" is an excellent one. Nonetheless, recent events suggest that there is room for improvement in this area. It is prudent to formalize the process of determining how cleanup efforts should be conducted, and when they should be terminated (Sec. 102(j)).

The inclusion of inland oil barges in the federal scheme, as in H.R. 1465, is critical. Because inland barges operate in close proximity to shorelands, ecologically sensitive wetlands, and areas of commercial development, a spill from a barge is much more likely to cause extensive damage to natural resources and personal property than a spill out in open waters. In addition, inland barges often carry refined petroleum products, cargo that falls within the definition of "oil" in H.R. 1465. Refined petroleum products are usually significantly more toxic than crude. Thus, the degree of damage to natural resources and sensitive ecological systems caused by a spill of refined products is likely to be worse than the damage from a spill of crude. For these reasons we support the inclusion of inland barges in H.R. 1465.

We also support the liability rates for inland tankers of $300 per ton, or $500,000, whichever is greater. We see no reason, however, why liability rates for "non-self-propelled vessel of less than 3,000 gross tons carrying oil in bulk as cargo or in residue from cargo and operating on the internal waters of the United States" should be set at a level different than tankers. The liability rates for inland tankers should be the same as those provided for all tankers, $500 per gross ton, with a minimum level of liability set at $5 million (Sec. 102(c)(1)(B)).

The direct draw authority of $100,000 as provided in H.R. 1465 is positive. It does not, however, go far enough. As history shows, spills can be massive in size, and can occur in the most ecologically rich and fragile areas, areas that are the economic lifeblood for many citizens and businesses. Inclement weather can exacerbate containment and removal operations. In the event of a major oil spill, the affected State must be able to move extremely fast to contain what oil has already spilled, and attempt to stop more oil from spilling. We believe, based on recent events, that a direct draw level of $1,000,000 would be justified in assuring that adequate response capability by the States is available. By granting direct draw authority of up to $1,000,000 to State officials, the great majority of spills, many of which are unfortunately, almost routine in nature, would not require the additional costs of federal involvement.

CSO encourages the express repeal of the 1851 Limitation of Liability Act. In order to avoid the possibility of litigation over this point, it should be expressed that the 1851 Limitation of Liability Act does not apply in cases involving vessels and facilities covered by State or federal oil spill liability and compensation laws.

CSO's primary concern with H.R. 1465 is the preemption of State law on an action for removal costs or damages (Sec. 109(a)). But for this one provision, CSO could give full, although qualified, support to H.R. 1465. We must note that, except when implementing the international Protocols, there is no necessity to preempt State liability laws. Other federal laws, including Superfund (CERCLA), the Clean Air Act, the Clean Water Act, and the Endangered Species Act do not preempt State authority. There is no reason why domestic

oil spill legislation should preempt State law. There is a perceived political necessity to preempt State liability laws. We do not share this perception.

Nonetheless, CSO supports ratification of the Protocols, per Title III of H.R. 1465, and enactment of domestic legislation. This position reflects a changing state concensus, from opposition to State preemption of any kind, to acceptance of a necessary, yet limited, degree of "supercession." In order to receive the benefits of an interrelated international/national/ State oil spill liability and compensation system, which is only possible through U.S. ratification and eventual implementation of the Protocols, the States must accept a requisite degree of "supercession" of State law.

We must make it clear, however, that our support for the Protocols is dependent upon strong domestic oil spill legislation that does not reduce State regulatory or police power in the oil spill area unnecessarily. CSO believes that if, to the greatest extent possible, State powers and authorities are preserved, an integrated international/national/State oil spill system would provide significant benefits to State resources, property, and citizens.

CSO recongizes the necessity of "superceding" State laws by ratifying the Protocols. Otherwise, the Protocols have far less chance of coming into force and effect. To the contrary, however, CSO also recognizes that it is not necessary to preempt State liability laws to implement domestic oil spill legislation. In other words, when a spill occurs from an ocean-going tanker covered by the Protocols, CSO could accept supercession of State law. But when a spill occurs from any other type of vessel or facility and the Protocols do not apply, CSO cannot accept any unnecessary preemption of State law. CSO, therefore, firmly believes that the State preemption provisions under H.R. 1465 should be amended to

include only those oil spills to which the international Protocols apply.

These provisions, at this time, form CSO's only significant objection to H.R. 1465. It should be noted, however, that the CSO and interested member governments, including the State of Alaska, are currently examining the application of H.R. 1465 to the Exxon Valdez incident. Nonetheless, we remain confident that these and other matters, if necessary, can be worked out in order that CSO can fully support this important legislation. We look forward to working with the Subcommittee on H.R. 1465 and appreciate this opportunity to share our views with you.

This concludes my remarks, Mr. Chairman. With me is Dr. Terry Howey, Director of the Coastal Management Division of the Louisiana Department of Natural Resources. We will be happy to answer any questions you may have. Thank You.

Statement

of the

American Institute of Marine Underwriters

prepared for the

House Merchant Marine and Fisheries Committee

Coast Guard and Navigation Subcommittee

on

Oil Spill Liability and Compensation

Legislation (H.R. 1465)

May 11, 1989

AIMU is pleased to have this opportunity once again to present its views on the proposal before this Subcommittee relating to the establishment of a comprehensive system of liability and compensation for oil spill damage and removal costs (H.R. 1465). AIMU is a non-profit trade association representing over 100 marine insurers whose members underwrite over 90% of the marine insurance done in the United States. The American marine insurance market has been involved in insuring pollution liabilities arising from Federal statutory provisions for the past fourteen years. The Water Quality Insurance Syndicate (WQIS) is a pool of 27 marine insurers from the American market, which insures liabilities imposed on vessel owners and operators by the Federal Water Pollution Control Act Amendments (FWPCA), the Outer Continental Shelf Lands Act Amendments (OCSLAA) and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). In addition, WQIS insures the liability of vessel owners and operators to third-parties for property damage caused by pollution. In conjunction with coverage of the liabilities under FWPCA and OCSLAA, WQIS provides the Coast Guard with the evidence of insurance required by vessel operators for certification of financial responsibility. In total, WQIS insures liabilities from oil or hazardous substance pollution for over 15,000 vessels operating primarily in the inland and coastal waters of the United States.

There are currently at least three insurance facilities or pools as well as several individual companies within the American

market which underwrite risks for mobile drilling vessels and fixed offshore installations located on the Outer Continental Shelf and elsewhere throughout the world. Their coverages include pollution exposures. These pools and companies provide an alternative United States insurance market for the offshore oil industry.

We are pleased to offer our views on the legislation before you on the basis of the unique experiences and perspectives of the American marine insurance market. Consideration of this legislation is particularly appropriate in view of the tragic spill in Prince William Sound. We would urge that the Subcommittee bear in mind the fact that despite the magnitude of the Exxon Valdez incident, all but a handful of spills have been adequately covered by limits of liability in existing legislation. It would be unfortunate to enact legislation which would be harmful or overly burdensome for the segment of the maritime industry serving the inland, harbor, and coastal waters of the U.S. which has had, on the whole, a good record, because of this one incident involving a VLCC.

H.R. 1465 would provide a "comprehensive" national system of liability and compensation for oil spill damages and removal costs. AIMU believes it is imperative that there be preemptive federal legislation in this field, ending the confusing maze of conflicting pollution liability statutes which have arisen in various states. Yet, there are problems with the bill which could

pose obstacles to the underwriting of the liabilities proposed under the legislation. The insurability of the proposed risks will depend upon the ability of underwriters to adequately assess the risks involved. Uncertainty regarding the nature of the risk could lead to either high premiums beyond the reach of smaller and medium-sized operators or to total uninsurability.

We have attempted to organize our comments under important concepts which we believe are vital to the workability and insurability of the proposed oil "Superfund" system.

Comprehensiveness

Our understanding has always been that one of the basic goals in enacting a "Superfund" would be to preempt or supersede existing statutes relating to pollution liability. Somehow, over the years we have lost sight of this goal - a truly comprehensive system. From the point of view of vessel owners and insurers, H.R. 1465 cannot be termed comprehensive. The bill addresses only spills of petroleum. Hazardous substances spills are dealt with under CERCLA. FWPCA liabilities, at least for non-petroleum oil, would continue. Even with a unified certificate, vessels would be subject to separate liabilities under different acts. This legislation, as proposed, cannot be considered "comprehensive" in view of these varying liability schemes continuing to be imposed on the maritime community. Certainly, this confusion should be eliminated. The draft should also be revised to eliminate all

cross references to existing spill liability statutes. See for instance §101(25). Any provisions to be retained from FWPCA, TAP, OCSLAA, Deepwater Ports, etc. should be incorporated within the Superfund bill.

Simply stated, the American marine insurance market seeks a truly comprehensive, preemptive national system in which reasonable liability limits are clearly defined and ascertainable, with the preservation of adequate and fair defenses under the law.

Preemption

It is vital to the workability of the oil "Superfund" proposal that it establish a uniform and exclusive statutory scheme covering oil pollution on and in navigable waters and for claims for damages caused thereby. It must preempt state laws in order to eradicate the existing patchwork of conflicting and confusing federal and state law. Vessels must be permitted to move freely from one state jurisdiction to another without the burden of meeting financial responsibility requirements in each separate state and without being subjected to multiple regimes of law imposing varying degrees and limits of liability.

We generally support the preemption language found in §109 of the bill. However, we urge that H.R. 1465 be amended to provide that it is the exclusive remedy for any removal costs or damages and that liability may not be imposed on a guarantor or

responsible party except in accordance with the bill. State penalties should also be preempted.

Defenses

One important consideration for insurers is the maintenance of adequate defenses. The current defenses provided in FWPCA have been eroded in H.R. 1465 even though experience lends no support to the narrowing of these defenses. Section 102(b)(1)(B) of H.R. 1465 (page 14) provides that there would be no liability if the incident is "solely" caused by an act of a third party other than "one whose act or omission occurs in connection with a contractual relationship with a responsible party." It is improper and contrary to tradition in maritime law to hold a "dumb barge" which is innocent of any wrongdoing responsible for a spill caused by a towing tug owned by someone else. The existence of a simple towing contract between the tug and the barge should not justify the denial of the traditional concept of the independent liability of a tower under contract to a barge owner. See generally The Law of Tug, Tow and Pilotage, 2nd Edition (1982) by Alex L. Parks, page 22 et seq.; The Law of Admiralty, 2nd Edition (1975) by Grant Gilmore and Charles L. Black, Jr. at page 516; See for example, The Fort George, 183 F.731 (2nd Cir. 1910), cert. denied, 219 U.S. 589, 31 S.Ct. 472 (1911).

There are other instances in which the operation of this provision would be unfair. Often an oil company will contract

with a vessel owner for transportation of oil. If there were a spill from the vessel due to negligence of the oil company's shore side personnel or due to defective terminal equipment during the loading or unloading of cargo an inequitable situation could arise. The vessel, by virtue of the contract with the oil company, could not avail itself of the defense that the oil company was a negligent third-party who caused the spill.

With respect to defenses to liability in general, requiring that an incident be caused "solely" by someone or something before a defense would be available is unjust. A comparative negligence standard, i.e. the apportionment of liability to the extent that an incident is caused by someone, would be more consistent with settled principles of maritime law.

Regarding §102(b)(1), we also believe that there should be specific mention of negligence on the part of the United States Government as a defense. It is arguable that the third-party defense as it is drafted would include government, but we believe it would be preferable to specifically say that negligence on the part of the United States Government is a defense. See FWPCA §311 (f)(1)(C).

With regard to paragraph §102 (b)(1)(B), references to "a" responsible party should be changed to "the" responsible party. The reference is to the owner or operator of the source vessel.

The owner of a third party vessel is also "a" responsible party. The use of "a" is confusing.

In Section 107(d) (at page 37-38), an insurer is denied defenses to a direct action which were accorded to insurers under FWPCA. Despite misdeclarations or fraud by an assured and consequent acceptance of a risk which might otherwise have been rejected, an insurer might be subject to much higher exposure than anticipated. This flies in the fact of traditional general insurance law. We recommend that §107(d) page 38, starting at line 7, be amended to parallel FWPCA §311(p)(3):

> The guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

Section 107(e) was drafted prior to the change in the bill providing for the liability of the non-spilling causing vessel. This section should be redrafted to reflect that change. Section 107(e) at page 38 line 18 should read:

> was a source of <u>or caused the</u> oil pollution in that incident.

Claims Settlement Procedures

Regarding claims settlement procedures [see §102(d)], the bill would establish a complicated structure of interest rates running from various dates depending upon the relationship of the final amount of settlement to the initial offer. This system would impose heavy administrative burdens upon the insurance companies and build unnecessary costs into the system. In addition, fear of incurring interest costs may force insurance companies to settle exaggerated claims too quickly. Heavy administrative costs and precipitous settlement of exaggerated claims are to no one's benefit. The automatic running of interest should not be part of the amicable claims settlement process. We believe that 90 days would be an appropriate amount of time for guarantors to adequately investigate most claims. Regarding §102(d)(2)(B), p. 17, l. 25, it should be made clear that an offer by the responsible party or the guarantor may toll the running of interest as described in the section.

The time frame for denial of designation is also unnecessarily harsh. [Section 105(b), at page 33]. The owner or operator must deny designation as a source of a spill within 5 days. The source of the spill is sometimes difficult to track down and vessel owners and operators should not be forced into an ill-considered acceptance or denial.

AIMU further suggests that the Coast Guard be given discretion in requiring advertising by a designated source regarding the filing of claims. There are instances where more than one spill occurs in the same vicinity within a short time frame. The confusion arises when a mystery spill causing heavy damage occurs at approximately the same time as a small spill from an identifiable source, causing little or no damage. It is possible that the designation and advertising by the designated source of the small spill could lead to attempted recovery by claimants injured by the mystery spill. The costs of tests to prove the source of each spill could be prohibitive. We suggest that the Coast Guard be given the authority to waive the necessity for advertising to avoid such a situation.

With respect to the filing of claims with the fund, §104(d) provides for presentation to the fund only when full compensation is unavailable because of financial incapability or because of a limit of liability. There is no specific provision, as we believe is intended, for submission to the fund because a responsible party is entitled to a defense.

Damages

There are other provisions in H.R. 1465 which would appear to invite unfounded claims. Economic loss should be recoverable only if it can be shown that the claimant derives at least 50% of his earnings from the use of the property or natural resource.

In the event of litigation, it will be very difficult to establish that an oil spill did or did not cause loss of revenue. Impairment of property value and consequential loss of a tax base should be used as the measure because it is definable.

Liability

We perceive certain discrepancies in the drafting of H.R. 1465 which could inadvertently expose vessel owners, operators and guarantors to liabilities beyond their limitations. With respect to the definition of "responsible party", §101(26) makes the vessel owner, operator or demise charterer a responsible party. When read with §102(a)(1) which imposes joint and several liability, it would appear that one possible construction might be that both the owner and operator are each liable up to the limits set forth in the bill. Although we believe that such a construction is unintended, we believe clarification would be helpful. Furthermore, the use of the term "responsible party" as a drafting tool appears to us to be unnecessarily pejorative in the context of this compensation and liability scheme.

Entitlement to limitation

Section 102(c)(2)(B) provides that a responsible party is not entitled to a limitation if he "fails or refuses" to report a spill or to provide "all reasonable" cooperation with the responsible Federal official. We are concerned about what action

must be taken to constitute "all reasonable" cooperation. If a vessel owner or operator has limited financial resources and if the cost of completing the cleanup is beyond his ability to pay, would he fail to provide "all reasonable" cooperation if he is forced to ask the government to take over cleanup?

Natural Resources

Section 102(e)(6) requires the trustee to use sums recovered under §102 to restore, replace or acquire equivalent natural resources. We urge that such sums be required to be expended within a reasonable period of time (perhaps three years) and that any such sums not so utilized by the expiration of that time period should be refunded.

Financial Responsibility

Section 107(g) provides that any regulation regarding financial responsibility issued under FWPCA shall be deemed and construed to be a regulation issued pursuant to the legislation under consideration. We urge that this grandfathering clause be clarified. If the intent of this section is merely to assure that the certificates remain in force pursuant to the contingency plan requirements until new regulations are issued it should be so stated. However, the current language could be construed to mean that a certificate issued under FWPCA to cover a liability limit at $125 per gross ton would suddenly become a certificate under

the higher limits pursuant to H.R. 1465. That would obviously be unfair and unworkable. The "Superfund" provides for much broader liabilities including liabilities to third parties and liability for economic loss and damages. Premiums were collected for the lower limits and liabilities and underwriting evaluations under the new statute would not have been applied. We urge that this section be clarified so that guarantors don't suddenly find themselves insuring higher risks under a new regime with no reevaluation.

With respect to the provision regarding seizure of oil in §107 (a)(4), this requirement will force the oil cargo owners to verify the existence of financial responsibility for vessels carrying their oil. This will result in considerably more paper work for the guarantors who will have to verify the existence of a valid certificate and will therefore lead to increased costs.

Liability of non-spilling vessel

H.R. 1465 as currently drafted provides for the liability of the non-spilling, causing vessel within the Superfund scheme. Section 203 amends the Federal Water Pollution Control Act (FWPCA) to conform to various requirements of H.R. 1465. Paragraph 3(A) of §203 makes subsections (f)(g) and (i) of Section 311 of FWPCA inapplicable with respect to an oil spill for which liability is established under H.R. 1465. We suggest that in addition, subsection (h) of Section 311 should be added to the list of FWPCA

sections which do not apply to an oil spill for which liability is established under the oil Superfund. Unless this is done, liability might be imposed under some other legal theory against a non-spilling, causing vessel despite the fact that H.R. 1465 is intended to establish a comprehensive scheme for oil spill compensation.

With respect to the drafting of §102(a)(5)(A) relating to the liability of third parties, we suggest that removal costs are not caused by a third party. We suggest that the references to removal costs and damages be deleted here as necessary.

The American marine insurance market stands ready to assist the subcommittee in any way we can. We foresee no difficulty in providing coverage under this proposed legislation provided that liability limits are clearly defined and the adequate defenses are retained. Thank you for this opportunity to contribute the American marine insurance market's view on a matter of such importance.

THE WILDERNESS SOCIETY

STATEMENT OF THE WILDERNESS SOCIETY ON H.R. 1465, OIL POLLUTION LIABILITY AND COMPENSATION LEGISLATION, BEFORE THE SUBCOMMITTEE ON COAST GUARD AND NAVIGATION OF THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES, MAY 11, 1989.

This statement is submitted by The Wilderness Society for the record of the hearing before the Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries on H.R. 1465, legislation concerning oil spill liability and compensation. The Wilderness Society (TWS) is a national, non-profit environmental organization with more than 282,000 members across the country. TWS is dedicated to the protection and preservation of America's public lands, including our wilderness areas, national parks, forests and wildlife refuges, and the host of natural resources found within them.

Since its founding in 1935 by Bob Marshall, TWS has had a special concern for the wild lands and waters of Alaska. The Society opposed the development of the Trans-Alaska Pipeline because of the potential for devastating environmental damage, and opposes exploration of the Arctic National Wildlife Refuge for the same reasons.

TWS has not participated heretofore in the debate concerning oil spill liability funds. We are compelled to provide this statement for the hearing record on H.R. 1465 because of the catastrophic oil spill in Prince William Sound caused by the March 24, 1989 grounding of the Exxon-Valdez on Bligh Reef. It is apparent from the circumstances surrounding this tragedy that present oil spill liability and compensation arrangements have not resulted in corporate decisionmaking which gives sufficient weight to safety and environmental concerns. The spill in Prince William Sound need not and should not have occurred. Because of that, it is critical that Congress reevaluate the current approach to oil spill liability and include in any new legislation principles which will assure that such tragedies are not repeated. Some of these principles are features of previously proposed legislation and/or statutes like the Clean Water Act and the Solid Waste Act (RCRA). All are basic to a system which holds corporations responsible for their management decisions and conduct.

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The Wilderness Society regards the following principles as essential to any legislation or oil spill liability:

1. **Standard of Care**

Corporations that develop, produce, process and transport oil must operate under the highest standard of care. This standard must be made explicit in any legislation in order to require corporations to think carefully before undertaking operations in sensitive environments with significant natural resource values. The standard of care should promote a commitment of the highest level to the prevention of accidents or releases and the development of contingency plans for accidents and clean-up of spills as an integral part of all corporate decisionmaking.

2. **Liability**

The current legislative approach to liability funds allows companies to avoid basing important safety and environmental decisions on exposure to liability. By spreading the financial responsibility for the consequences of an oil spill throughout the oil production and transport industry, without regard to risk, the funds foster corporate strategies that ignore or minimize safety and environmental protection. Any legislation dealing with oil spill liability must provide incentives for corporate decisions which emphasize risk reduction and safety--in the design, purchase and operation of pipelines, tankers and other equipment, in the hiring, training and supervision of personnel, and in the development and use of clean-up technologies. One incentive which will speak strongly to corporations is strict and unlimited liability for the consequences of strategies which result in environmental disasters. This liability must extend to natural resources damage, including damage to or loss of unique ecosystems.

TWS is not opposed to the concept of funds particularly for situations which are truly accidental. However, participation in such funds should be risk-related and made dependent on a company's safety record, contingency plans and commitment to the development and use of clean-up technologies.

Furthermore, insurance coverage should not be available in instances of negligent conduct or disregard of the law.

3. **Criminal Penalties**

Corporate officers should be subject to criminal penalties for disregard of applicable law or for negligence.

4. **No Preemption of State Law**

Legislation on oil spill liability should recognize the legitimate interests of the states in protecting their citizens and their environments. The rights of states to enact statutes which impose different and/or more stringent liability and compensation

requirements should not be abridged or preempted by federal law or international treaties.

5. **Natural Resource Damage Assessment**

A method must be developed for calculating natural resource damage which reflects appropriate values for lost and injured wildlife, scenic beauty, and natural processes. Liability for this damage must be unlimited. Compensation must assure full clean-up and restoration.

6. **Treaties**

Treaties and international protocols should be renegotiated by the Department of State to conform with the above stated principles.

Incorporation of the foregoing principles in oil spill liability legislation will accomplish a number of goals. Most important, it will notify companies involved in the production and transportation of oil that they must integrate environmental and safety concerns into corporate decisionmaking.

ENVIRONMENTAL POLICY INSTITUTE
FRIENDS OF THE EARTH
OCEANIC SOCIETY

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May 11, 1989

Statement of Clifton Curtis
on behalf of
The Oceanic Society, Environmental Policy Institute and Friends of the Earth
before the
Subcommittee on Coast Guard and Navigation of the
House Committee on Merchant Marine and Fisheries
concerning
Oil Pollution Liability and Compensation Legislation

I am Clifton Curtis, Executive Director of the Oceanic Society, a 30,000 member national non-profit environmental organization dedicated to the protection, conservation and wise use of ocean and coastal resources. Earlier this year, the Oceanic Society merged with Environmental Policy Institute and Friends of the Earth. My testimony today is presented on behalf of those three groups, as well as on behalf of several other environmental organizations whose names will be submitted before the close of this hearing record (hereafter referred to as the environmental "coalition").

March 24, 1989 -- 12:04 a.m. The date and time when the Exxon Valdez first rammed into Bligh Reef in Prince William Sound. As we all know, there are events in history that indelibly sear the public's consciousness. Such events serve as markers in our collective psyche -- as signposts in our lives. Some of those events can have a profound impact on the way we think about such things as ourselves, other humans, other species, and the planet's natural ecosystem. The Exxon Valdez' spill of over 10 million gallons of North Slope Alaskan crude oil is an incident of that calibre.

This view was confirmed in a recent public opinion poll and survey that was done following the Exxon Valdez spill.[1] As part of the findings, pollster V. Lance Tarrance noted that:

> " There is little doubt now that the Exxon Valdez oil tragedy in Alaska will indeed become a "moment in history" that may shape the 1990 election debate -- mobilizing voters to feel more intensely about the need to act quickly and decisively to protect not only this country's environment, but perhaps the planet's environment as well."

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1 The Rising Tide: Public Opinion, Policy & Politics, Analyses of polling trends written by Americans for the Environment, Louis Harris, Harris & Associates, V. Lance Tarrance, Tarrance & Associates, and Celinda C. Lake, Greenberg-Lake/The Analysis Group, April 20, 1989.

Based on information and analyses surrounding the Exxon Valdez spill, it was a catastrophic tragedy that didn't have to happen. It should not have happened. Looking ahead, it challenges us to make sure it never happens again. And as pollsters are finding, citizens are expecting elected leaders to do everything possible to ensure that it won't.

Mr. Chairman, several weeks ago, on April 6, 1989, your Subcommittee held an opening hearing in relation to the Exxon Valdez oil spill. I submitted a written statement at that time on behalf of the Oceanic Society, Environmental Policy Institute and Friends of the Earth. I described the tides of destruction resulting from the spill, recommending several matters for which the catastrophe serves as a clarion call to do things differently -- and expeditiously. Updating that statement, I would like to submit, as an addendum to my testimony today, a May 2, 1989, 8-page listing of "Imperatives for Action" by the U.S. Congress and the Bush Administration, and by Exxon and the Alyeska Consortium that my three organizations prepared. As detailed in that addendum, enactment of comprehensive oil spill liability and compensation legislation is one of the imperatives requiring action by the U.S. Congress and the Bush Administration.

Oil spill liability and compensation legislation has a familiar ring to it. Far too familiar. Going back to 1975, bills have been introduced, hearings and markups held, and floor votes recorded in favor of legislation in either the House or Senate. Close, at times, but no cigar. There's been progress, as the two houses have worked out some of their differences -- but differences still remain. Moreover, given the Exxon Valdez spill, additional improvements are needed. It's time to get the job done -- well before the close of this 1st Session of the 101st Congress. One catastrophic spill without an adequate federal regime is far too many. March 24, 1989 -- 12:04 a.m.

What our nation needs, and does not have, is a package of complementary national, state and international laws that will fully compensate victims of oil spills, including damages to natural resources, other property, and loss of income, while also providing for quick, efficient and effective cleanup. As discussed later in my testimony, a comprehensive regime needs to include such features as: preservation of coastal state unlimited liability laws; a $1 billion per incident domestic trust fund, generally, with unlimited access to that fund where necessary to meet international treaty obligations; a broader scope of liability for natural resource damages; and a broader set of exceptions to the limits on liability. Before commenting further on legislative provisions that need to be included in H.R. 1465, though, I'd like to focus briefly on the existing legal state of affairs.

I. Inadequacies of our Current Laws

At present, there exists a fragmented hodge podge of national and state laws providing inadequate cleanup and damage remedies, taxpayer subsidies to cover cleanup costs, damages that go uncompensated, corporate structures designed to limit exposure, and other legal barriers to victim recoveries -- such as deadlines for filing claims and burdens of proof that favor the spiller.

A. National Law

Under existing national law, at least five statutes deal with the issue of oil spill liability and compensation. Each is different, and each is inadequate.

The Clean Water Act (CWA), 33 U.S.C. Sec. 1251 et seq., which has jurisdiction over most large tanker and inland barge incidents, historically has not provided the kind of protection it should. The Act sets inappropriately low limits of liability for owners and operators of vessels with respect to federal oil spill removal costs and natural damages, and provides no coverage or compensation for other damages.

As documented in a report prepared by the U.S. General Accounting Office in 1983,[2] gross inadequacies exist in the CWA's provisions dealing with spiller responsibility for cleanup costs. Between 1971 and 1982 the U.S. government obligated $124 million from the CWA's Section 311(k) revolving fund, but recovered only $49 million from spillers, for a total expenditure of $75 million in national funds. In individual cases the percentage of cleanup costs expended by the government which have been recovered in courts has been even lower.[3] National funds also are expended in the costly, time consuming litigation required to recoup cleanup expenditures. According to the GAO report, as of 1982 there were 77 cases in litigation involving U.S. government efforts to recover $36.5 million.

Another problem with the CWA is that its 311(k) revolving fund is inadequate to cover large oil spills. It has never been funded at the authorized level of $35 million, leaving aside the fact that this amount is far too low. As U.S. Coast Guard Commandant Paul Yost noted at your April 6, 1989, hearing, the amount of money then available in that fund was less than $4 million. Moreover, since the fund is appropriated from the Treasury, it undercuts budget reduction goals and runs counter to cost internalization policies. These policies are exacerbated by the fact that most courts have found the CWA to provide the only national remedy for recovering oil spill cleanup costs.[4] These courts have held that the government cannot use common law maritime tort or nuisance theories to recover its excess cleanup costs.

In addition to the CWA, the Outer Continental Shelf Lands Act Amendments (OCSLAA), 43 U.S.C. Sec. 1801 et seq., the Deep Water Ports Act (DWPA), 33 U.S.C. Sec. 1501 et seq., and the Trans-Alaska Pipeline Authorization Act (TAPAA), 43 U.S.C. Sec. 1651 et seq., all play a role in regulating oil spill liability and compensation. But they provide uneven and inadequate liability standards and scope of coverage for cleanup costs and damages associated with activities covered by each individual law. As for the Exxon Valdez spill, some legal analysts have even suggested that the TAPAA -- which is the principal federal liability and compensation law applicable to the spill other than the CWA -- offers a liability defense if Exxon can prove that the Coast Guard was negligent in not providing more effective navigational aids in Prince William Sound. Moreover, this array of narrowly defined programs can create administrative problems as well. As a result, the goal of compensating those injured may be complicated by questions of regulatory jurisdiction of the various federal agencies. For example, when an oil spill occurs it

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2 "International Oil Pollution: Current and Alternative Liability and Compensation Arrangements Affecting the United States," U.S. General Accounting Office, Washington, D.C., February 3, 1983.

3 For example, of the $9.6 million that the Federal government spent to clean up the 1976 Nepco Barge incident, only $875,000 (or 9%) of total cleanup costs was held to be the legal liability of the owners. In Re Oswego Barge, 439 F. Supp. 342 (D.C.N.Y. 1977).

4 See, e.g., U.S. v. Dixies Carriers, Inc., 627 F.2d 736 (5th Cir. 1980).

would be necessary to track down the source of the spill before the applicable statute is applied and compensation claims presented.

Finally, the 1851 Limitation of Liability Act, 46 U.S.C. Sec. 181 et seq., represents a potentially devastating bar to effective recovery of either cleanup costs or damages. Perhaps that Act had merit 135 years ago, since its purpose was to further the interests of this country's budding merchant marine by encouraging shipbuilding and employment of ships. To that end, however, vessel owner liability was limited to "the amount or value of the interest of such owner in such vessel, and her freight then pending" (Sec. 183(a)). While the law does not appear applicable to the Exxon Valdez spill, given the more recent expression of intent under the federal TAPAA law, current application of that 1851 Act elsewhere has resulted in situations where the owner pays next to nothing because the vessel and cargo are a total loss following a catastrophic incident. In two federal cases where the owner of a vessel has invoked the provisions of this Act, the courts have held that this law, where applicable, has the effect of limiting recoveries under state law, which would include unlimited liability laws.[5]

B. State Law

State statutes on the subject of oil spill liability and compensation vary tremendously as to their adequacy. In 1985 the Oceanic Society undertook a study for the U.S. Coast Guard in which staff examined state laws that address this issue.[6] The study provided an overview of 24 state oil spill liability and compensation laws, and a digest of statements made by various interested parties since 1975 on the question of state law preemption.

Of the 24 state statutes examined in 1985, there exists substantial variations from state to state with respect to such critical matters as: who is liable; standards of liability; defenses to liability; financial responsibility requirements; cleanup costs; damages; and penalties. In 17 states, the laws provide for unlimited liability, while the other 7 set tonnage-based or overall limits (varying from $5 million to $50 million). Eleven of the 24 state laws have established special funds, which cover various costs and damages incurred as a result of a spill, and which are financed from industry assessments, the general treasury, taxes or reimbursements from spillers. Of those state laws that provide funds, 6 place a ceiling on the amount they may accumulate (varying from $1 million to $50 million). In practice, the amount actually available is often substantially less. Of those states not maintaining special funds, some laws provide for financial support from the general treasury or other sources.

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5 See, e.g., Complaint of Harbor Towing Corp. 335 F. Supp. 1150 (D.C. Md. 1971); and In Re Oswego Barge Corp., supra

6 "Oil Spill Liability and Compensation Legislative Preemption Considerations," prepared by the Oceanic Society for the U.S. Coast Guard, March 1, 1985 (as published in the congressional hearing report: Oil Pollution Liability. Hearing before the Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries, 99th Congress, 1st Sess., March 27, 1985, Serial No. 99-2, at 173-288). (With respect to the one-page table in the study (at 233) comparing key provisions of the 24 state laws, the Coastal States Organization has prepared a more recent summary comparison of those same state laws that highlights other pertinent information.)

Given the substantial variations existing in state laws on this subject, the victims of an oil spill affecting one coastal state can fare far better, or worse, than adjacent states' victims in their efforts to receive adequate compensation for their losses. If, for example, a major oil spill occurred in U.S. waters in the Gulf, residents of Florida and Texas would have to deal with state laws containing liability limits and more stringent defenses to liability, while having the benefit of special funds up to certain limits. In contrast, the residents of Alabama, Louisiana and Mississippi could avail themselves of their states' theoretical unlimited liability law provisions and less stringent defenses to liability. However, those states have no special funds available to provide expeditious compensation where the spiller does not do so, whatever the reason. Similar examples of substantial state law variations exist for adjacent coastal states along our east and west coasts.

C. Common Law

Underlying our national and state laws is a diverse body of common law -- court--made law stemming from the holdings of individual cases, rather than the mandate of statutes. Where statutory remedies are inadequate, victims of oil spills are left with the recourse of common law remedies. As a general statement, common law remedies are ill-equipped to meet claims for cleanup costs and damages. We agree with the GAO report's characterization of the prospects for a damage claimant recovering from a spiller based on common law as "likely to be minimal."[7]

Numerous problems exist under common law. Since it evolves very slowly, the common law system is not yet sufficiently advanced to deal well with the complicated aspects of releases of hazardous substances in today's world. Victims with either property damage or personal injury claims caused by oil pollution must still meet tough statute of limitation requirements and prove proximate cause and cause in fact. The burden of proving causation, even under strict liability, is particularly onerous in suits for damages caused by oil pollution because the scientific state of the art is often inadequate to link damages claimed with the spill at issue. This burden of proof may be sufficiently onerous as to make it difficult for a plaintiff to find legal representation. In addition, since each state and the federal government has its own body of common law, the degree of variations makes it difficult to assess a victim's overall chances for successfull recovery of claims.

In general, litigation barriers can be overwhelming in environmental and economic damage suits. The history of litigation arising out of the Amoco Cadiz spill is instructive of the complex process that unfolds when claims for a catastrophic spill are litigated in our courts. Although that spill occurred in 1978, it took until 1984 for the U.S. District Court in Chicago to determine who was liable. Discovery proceedings surrounding claims then became the major focus, and it was only in April, 1986, that the "phase two" trial began in order to decide who should be paid how much for what. In 1988, and early 1989, the court finally issued phase two rulings. Scores of lawyers have been involved in the litigation, and the results thus far reached in the Chicago court are already being challenged through higher court appeals.

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7 GAO Report, supra, at 14.

D. International Law

In addition to national and state laws presently in effect, there also exists an international regime which has been developed under the auspices of the International Maritime Organization (IMO). Two treaties, the International Convention on Oil Pollution Damage, 1969 (CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund) were agreed to in the aftermath of the 1967 Torrey Canyon spill off England's southwest coast.

Those two conventions sought to establish a uniform international oil spill liability and compensation system. The CLC established shipowner liability to persons, including governments, for oil pollution damages and cleanup costs subject to specific limitations. The Fund established an international fund administered by the parties that is supported by contributions calculated on the basis of the number of barrels of seaborne oil received in party states. It also provides for compensation beyond that provided by the shipowner under CLC. The CLC came into force in 1975; and the Fund in 1978.

The United States never agreed to accept those Conventions, despite efforts towards that end during the Nixon and Ford Administrations. Inadequate liability and compensation limits, including their preemptive effect on national and state law, historically have been the reason underlying the Senate's refusal to give its advice and consent. The environmental community strongly supported the Senate's decision not to agree to such ratification, absent substantial revision of those regimes.

II. Establishing a Comprehensive Regime

As noted earlier, a mix of national, state and international components are needed to provide a comprehensive oil spill liability and compensation regime. As discussed more fully below, those components are: enactment of a comprehensive national law; retention of state liability laws and programs; and U.S. ratification of the 1984 CLC/Fund Protocols (which substantially improve the underlying CLC/Fund Conventions). This regime offers a package approach far superior to the present situation. Each component can complement the others to ensure full and fair coverage. The combination of these components achieves the "polluter pays" principle in important respects, while also preserving state laws and enabling the U.S. to ratify and promote broad participation in an international treaty regime that will provide remedies for cleanup and damages in ocean and coastal waters around the globe.

A. Comprehensive National Law

Through enactment of a comprehensive national law, the opportunity exists for the first time in our nation's history to have in place a regime dealing with oil spills that, among other features:

* fairly assigns risk and internalizes spill-related costs of transporting and handling oil among the responsible party and the oil industry;

* covers repair, restoration and rehabilitation or replacement of damaged or destroyed natural resources (or acquisition of equivalent resources to the extent restoration is impossible), plus compensation for all lost public and private uses of the resources, and other demonstrated damages;

* completely reimburses spill victims, including third party damages, and compensates both native Americans and the public for loss of use or enjoyment of natural resources;

* provides substantial, readily available funds to pay for clean up and damage claims in an expeditious manner, as well as pre-positioning of cleanup equipment and research benefiting both natural resource damage assessment determinations and long term ecological impacts on species and the marine ecosystem;

* makes it much more difficult for the spiller to rely on legal defenses to delay or avoid responsibility;

* establishes more effective incentives for preventing oil discharges; and

* sets the stage for an effective, package approach involving complementary coastal state measures and U.S. participation in the international 1984 revised treaty regime.

H.R. 1465, in many respects, represents the kind of comprehensive national law that is needed. As noted earlier in my testimony, however, several provisions need to be strengthened or added (most, but not all, of which track provisions contained in S. 686, as introduced by Senator Mitchell). These recommended changes to H.R. 1465 are detailed in an attachment to my testimony (Appendix A). I would be glad to discuss those specific recommendations with you, other Members and the Subcommittee's staff.

B. CLC/Fund Protocols

In the Spring of 1984, the CLC and Fund Conventions were significantly improved at a diplomatic conference in which the U.S. delegation played a leading role. As a private sector advisor on that delegation, I had the opportunity to witness firsthand those negotiations. From an environmental perspective, the 1984 CLC/Fund Protocols are far from perfect. However, on balance they serve as a necessary global "common denominator" meriting U.S. ratification.

In testimony by the Oceanic Society before the Senate Committee on Foreign Relations on May 15, 1986, I presented several reasons for supporting U.S. ratification of the Protocols. Summarily stated, (1) there are substantial increases in the liability and compensation that will be borne by shipowner and cargo interests under the Protocols; (2) the extension of the geographic scope of coverage to include coastal state 200-mile Exclusive Economic Zones significantly expands the original Conventions' territorial sea focus; (3) the Protocols clarify and improve the definition of pollution damage; (4) the definition of incident was revised to clearly include pre-spill threat amelioration measures; and (5) the categories of vessels covered was substantially broadened concerning both unladen tankers and combination carriers.

Other testimony at that hearing focused on several problems that could arise absent U.S. ratification and entry into force of the Protocols, i.e., situations involving foreign shipowners where it is often difficult, or impossible, to obtain jurisdiction over them. Even if jurisdiction is obtained against a shipowner in a U.S. court, it can be very difficult to get the country where the ship is registered to enforce our judgment. Finally, most states do not require shipowners to demonstrate financial responsibility, so there is

no way to ensure the existence of insurance or assets sufficient to satisfy a large judgment, absent a regime such as that proposed under the Protocols.[8]

As has often been said, the only boundaries that our ocean ecosystem knows are artificially created political ones. The three organizations I work for are committed to protection and wise use of the oceans around the globe. As U.S.- centered organizations, we are best equipped to address issues involving this country's coastal seas. At the same time, though, we have organizational links with Friends of the Earth's sister entities in thirty-three countries spanning the globe. Through those relationships, and contacts with other non-governmental organizations outside the United States, we are actively involved in promoting protection and conservation of marine ecosystems far beyond U.S. waters. The same is true for the other participants in the coalition endorsing this testimony.

Focusing on the United States, U.S. ratification of the CLC/Fund Protocols is needed because those global agreements -- in combination with an environmentally sound national regime and the retention of coastal state laws -- can assist in our efforts to ensure that victims are fully compensated. If in force, the Protocols could provide as much as $275 million for a single vessel spill, complementing compensation available under a comprehensive national law or state laws.[9]

Because of the importance of preserving coastal state liability laws, however, it is essential that language as set forth in Appendix A(8) be included in H.R. 1465 in relation to the CLC/Fund Protocols. Such language would enable the President, in circumscribed instances -- if and when the Protocols are in effect; the incident involves a vessel covered by the international CLC protocols; and the amount of the coastal state judgement as to spiller liability exceeds the CLC liability limit -- to waive the proposed $1 billion per incident cap under our domestic Fund to cover that award. This would provide a source of funds for state law judgments rendered under coastal state unlimited liability laws, and would enable the U.S. to participate in the international treaty regime -- two noteworthy and worthwhile objectives that would complement a new domestic law. While we are not wedded to the particular language suggested in Appendix A(8), we are committed to its intent: guaranteeing the preservation of coastal state liability laws.

At the same time, the new domestic law's reference to the scope of coverage for liability under the CLC/Fund Protocols needs to be clarified. As noted in H.R. 1465

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8 It should also be noted that ships passing the U.S. coast -- either in innocent passage through our territorial sea or Exclusive Economic Zone, but not entering a U.S. port -- can not be subjected to U.S. jurisdiction. However, such jurisdiction (and international Fund protection) would be available under the Protocols. It has been estimated that roughly 10% of vessels in U.S. coastal waters fall under this category.

9 Assuming the Protocols are ratified, and that they enter into force, H.R. 1465 enables U.S. contributions to the international Fund to be made from our domestic Fund (Sec. 103(a)(5)). As shown in a 1985 study undertaken for the U.S. Coast Guard, a single spill resulting in cleanup costs and damage awards in the range of $100 million during a 13-year period would be sufficient to move the United States' international fund balance from a net cost to a net benefit over the entire period. See, Economic Analysis of 1984 CLC and Fund Protocols, by Temple, Barker & Sloane, Inc., 1985; and Analysis of Proposed Revisions to the CLC and Fund Conventions, by Temple, Barker & Sloane, Inc., 1984.

(Sec. 302), "during any period in which the [CLC/Fund Protocols] are in force with respect to the United States, liability of an owner for pollution damage arising from an incident involving a ship shall be determined in accordance with [those Protocols]." In the coalition's view where the scope of liability coverage of domestic or coastal state laws is broader or different from than that addressed in CLC Protocol, then that liability would not be determined in accordance with the Protocols.[10] Legal analysts within the Reagan Administration addressed this scope of liability issue in relation to a Senate Foreign Relations Committee hearing on May 15, 1986, similarly concluding that the CLC Protocol would not preclude additional or different coverage. As a point of clarification, we ask that the Subcommittee add language to H.R. 1465 to reflect this view.

Since the President's forwarding of the CLC/Fund Protocols to the Senate for its "advice and consent" in 1985, it has been obvious that the Protocols can only be considered in the context of a comprehensive domestic law. The merits of giving advice and consent can not be determined without knowing the key elements of an agreed upon domestic regime. In that regard, we believe that the inclusion H.R. 1465's Title III handles this issue appropriately. It provides the mechanism for expeditiously accommodating the Protocols, if ratified, while also stating the obvious, i.e., that "nothing in [Title III] shall constitute ratification of either the [CLC or Fund] Conventions."

C. State Laws

Each time the environmental community has presented testimony before the Congress on oil spill liability and compensation, we have stated that, as a general principle, there should be no limits on liability. They undermine the goal of the "polluter pays" principle, since once the limit is reached, either someone else pays or the cleanup and damage costs go uncompensated. In either case, the polluter is subsidized.

At Congressional hearings in 1986, testimony I presented on behalf of the Oceanic Society suggested that preemption of state liability may be the necessary quid pro quo to achieving a comprehensive regime. As indicated in today's testimony, as well as in testimony presented before this Committee and the House Public Works Committee in 1987, that view was mistaken. Based on the expressed views of various interests, the converse is far closer to reality, i.e., that preservation of state liability laws is the necessary quid pro quo to achieving a comprehensive regime.

Legislation which does not preempt coastal state liability laws makes sense. States should be able to make the judgment that protection of their state waters and coastlines is crucial to their fishing or tourist industries, or that protection is sufficiently important to them that it outweighs the risk of reduced business activity or higher prices. For catastrophic spills, states that currently have unlimited liability laws on their books (such as Alaska) are better positioned to ensure full compensation if they have their own

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10 A good example might be the situation where natural resource damage resulted in a claim for acquisition of an equivalent marine or estuarine preserve. While the CLC Protocol administrators would likely find that such a claim was not covered by the scope of "pollution damage" under the CLC Protocol, such damages would be cognizable under the new domestic law if legislative language such as that proposed in Appendix A(2) were enacted.

liability regime to complement or buttress that provided at the federal level. At the other end of the spill spectrum, on past occasions some state officials also have expressed concern that such a regime -- including federal courts and federal administrators -- might not be well attuned to dealing with smaller but more frequently occurring spills and discharges that occur in state waters.

In addition to the merits of non-preemption from a "polluter pays" principle, retention of state liability laws also is consistent with this Administration's view that federal laws must incorporate a cooperative federal/state approach. Towards that end, non-preemption of state laws is the more appropriate response to cooperative federalism and states' rights, and language such as that provided in Appendix A (12) is needed.

Conclusion

Mr. Chairman, our coalition's interest in this issue is to work with you, other Members and staff of your Subcommittee, and others, to achieve essential advances in the legal, financial and institutional framework that are needed to protect people, real and personal property, and our ocean and coastal resources from the inevitable occurrence of oil spills.

The Exxon Valdez oil spill is a "moment in history" that can, given the tragedy it represents, catalyze the reforms that are needed, now, to redress this nation's inadequate regime for oil spill liability and compensation. The clock is running, though, and we need to act. March 24, 1989 -- 12:04 a.m.

* * *

Attachments

APPENDIX A

H.R. 1465, in many respects, represents the kind of national law that is needed. However, some provisions need to be strengthened or added (most, but not all, of which track provisions contained in S. 686, as introduced on April 4, 1989, by Senator Mitchell):.

(1) the definition of "act of God" (Sec. 101(1)) should be deleted; absent that being done, it needs to be modified by adding a phrase after the word "character," that would read: "and of a type totally unexpected given the area, the season, or the past history of conditions,"

(2) the scope of liability (Sec. 102(a)(2)) needs to be broadened by (1) adopting S. 686's formulations with respect to "subsistence use" and "loss of income or profits," (2) adding language concerning "natural resources" that would encompass: "damages for injury to, destruction of, or loss of natural resources, including the full costs of restoration or replacement of the resources (or acquisition of equivalent resources to the extent restoration is impossible), plus compensation for all lost public and private uses of the resources, and other demonstrated damages," and (3) adding language covering chronic affects on human health or wildlife (or, if not included, language indicating that such claims are not preempted by the new domestic law).

(3) the specified limits on liability (Sec. 102(c)(1)) should be modified to track S. 686's corresponding formulations, including the language concerning unlimited liability for all removal costs associated with any OCSLAA facility.

(4) the exceptions (Sec. 102(c)(2)) to the specified limits on liability (Sec. 102(c)(1)) should be broadened by striking the words "gross" and "within the privity or knowledge" from Sec. 102(c)(2)(A)(i); by substituting "by" for the words "within the privity or knowledge of" in Sec. 102(c)(2)(A)(ii); and by striking the phrase "and the reasonable party knows or has reason to know of the incident" in Sec. 102(c)(2)(B)(i).

(5) the language concerning liability adjustments allowing for lower limits for certain facilities (Sec. 102(c)(3)(A)) should either be stricken, or much clearer guidance should be given as to limited circumstances under which the $75,000,000 maximum limit can be lowered; and periodic reorts in relation to liability adjustment (Sec. 102(c)(3)(B)) should be modified to track S. 686's corresponding formulations.

(6) the provisions concerning natural resources liability, Trustees, measure of damages, rebuttable presumption and use of recovered sums (Sec. 102(e)) need to be modified to reflect the broader scope of liability for natural resources contained in paragraph (2), above.

(7) the provisions concerning uses of the fund (Sec. 103(a)) should be modified to track S. 686's corresponding formulations, with the exception of retaining H.R. 1465's Sec. 103(a)(5); the use of the fund for natural resource claims needs to be modified to reflect the broader scope of liability for natural resources contained in paragraph (2), above; and an additional use of the fund, if not already addressed by Sec. 103(a)(7)) of S. 686, should be added, i.e., for the costs of (1) establishing as many "striken team" centers as are deemed necessary (with report language suggesting that all major ports should have such a center), (2) R&D, as deemed necessary, for more effective cleanup and oil recovery technologies; and (3) the Coast Guard's purchase of state-of-the-art vessel traffic service (VTS) systems or other port and harbor navigational aids, as deemed necessary.

APPENDIX A (Page Two)

(8) the $500,000,000 per incident compensation available from the fund (Sec. 103(c)) should be doubled to $1,000,000,000 per incident, and additional language should be added to the end of that section which would read: "except that where an incident may give rise to compensable claims exceeding $1,000,000,000, the President shall waive the limits where it is determined such waiver is necessary to comply with the United States' obligations under international law".

(9) the direct draw right of state officials to obligate the domestic fund up to $100,000 (Sec. 103(d) and (e)) should be modified to track S. 686's corresponding formulations.

(10) a new provision concerning cleanup priorities and ordering of claims' awards should be added to allow for citizen petitions regarding priorities of payment on spills constituting substantial risk to health or the environment, and requests for emergency assistance or removal actions.

(11) the litigation, jurisdiction and venue provisions (Sec. 108) need several additional provisions: (1) language similar to Sec. 105(c) of S. 686 which recognizes the competency of state court jurisdiction; (2) citizen suit provisions for injunctive relief similar to those in the Clean Water Act, including qui tam actions by citizens on behalf of the U.S. when the responsible federal official should have acted but has not done so ; and (3) a provision providing for the award of costs and attorneys' fees for a successful plaintiff (with a similar provision for attorneys' fees and costs to claimants who successfully apply to the domestic trust fund for compensation).

(12) the language concerning preemption of state liability laws (Sec. 109) needs to be changed 180 degrees to ensure the preservation (non-preemption) of those laws, as per S. 686's corresponding formulations.

(13) the provision stating the effective date of the new domestic law (Sec. 110(a)) should be modified to read "after March 23, 1989" instead of "after the date of the enactment of this Act," with legislative report language to clearly indicate that its applicability to the Exxon Valdez spill is intended as a non-punitive reformulation of federal law in relation to that incident.

(14) the Title II conforming amendments with respect to the TAPPA Fund should track S. 686's corresponding formulation, which transfers any of that fund's remaining monies to the new domestic trust fund; and reference needs to be made elsewhere in Title II regarding the repeal of the 1851 Limitation of Liability Act.

(15) the penalties in Title II (Sec. 206) and elsewhere in H.R. 1465 should be revisited, with a view towards substantially increasing those, although criminal penalties should take effect only on the date of enactment of the new domestic law (rather than as of March 24, 1989, as recommended in paragraph (13), above).

(16) the Title III provisions regarding the potential applicability of the CLC/Fund Protocols (Sec. 302) should be modified to make it clear that liability of an owner for "pollution damage" under those treaties does not preclude additional liability under the new domestic law, or state laws, where the scope of liability is broader or different than that provided under the treaties (e.g., language contained in a predecessor House bill,

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H.R. 1232 could be added at the end of the first sentence of Section 302, which could read: "to the extent that coverage or compensation is adequate or available."

(17) with respect to the issuance of regulations (Sec. 308), adequate provision for public participation in any rulemaking processes under the new domestic law, including provisions for reimbursement of costs to participants (paid for out of the domestic fund), for whom it might otherwise be a hardship to participate, when it can be reasonably expected to promote a full and fair determination of the issues.

(18) a new provision legislating studies to determine whether current practices in the insurance industry provide any incentives or disincentives -- such as premium and fee variations -- to encourage industry to use vessels, other equipment and facilities, personnel training and certification, other manning requirements and other measures that will minimize the risk of spills.

* * *

ENVIRONMENTAL POLICY INSTITUTE
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FOR IMMEDIATE RELEASE **May 2, 1989**

The following two agendas for action were compiled by the staff of The Oceanic Society, the Environmental Policy Institute and Friends of the Earth in coordination with the Alaska Center for the Environment following a fact-finding mission to the Prince William Sound area last month by Clifton Curtis, executive director of The Oceanic Society.

IMPERATIVES FOR PROTECTION BY THE U.S. CONGRESS and the BUSH ADMINISTRATION

1) **ENSURE ECOLOGICALLY SOUND CLEANUP** -- Ecologically sound and effective cleanup initiatives need to be carried out now and in the months and years ahead by officials of the federal and state governments, by executives of the Exxon Corporation and the six other members of the Alyeska consortium, and by other private and non-profit organizations.

During the first five weeks following the spill, precious time has been lost in cleaning up oil from the spill. Exxon and Alyeska bear the brunt of the blame for this state of affairs, having far-too-little prepositioned equipment and personnel -- and having failed to move quickly enough in the hours and days immediately following the spill early on March 24th. While an Exxon cleanup plan recently has been "approved" by the Commandant of the U.S. Coast Guard, recent statements by Exxon officials suggest that they have a totally unrealistic comprehension of the magnitude of the problem -- especially their assessment that "Prince William Sound should be back to normal within three years." Special efforts are needed to ensure that the expertise, views and concerns of Native Alaskans, the conservation community and animal rights groups are given adequate regard in relation to cleanup plans, priorities and on-the-ground operations.

2) **PUSH SCIENTIFIC STUDIES AND RESEARCH** -- Intensive scientific efforts also are needed in two related areas. The first is damage assessments of the natural resources which have been impacted; the second is research into the long-term effects of these oil spills on the waters themselves, on the ocean beds, marine life and their food chains, the beaches, coastlines and other areas.

Last month Exxon announced that it is providing $15 million to the federal government and the State of Alaska to begin assessments of the extent of damage to Alaska's natural resources caused by the spill. That represents a step in the right direction -- but the amount is grossly insufficient and the role of the participants in the assessments needs to be more clearly defined (for example, the National Oceanic and Atmospheric Administration should take the leading federal role). Moreover, Exxon's $15 million payment does not address the crucial need for in-depth scientific research into the long-term ecological effects of such spills. Such research should be commissioned and undertaken as soon as feasible, fully funded by Exxon and the other Alyeska consortium members, with the actual science of the studies carefully coordinated by a team of outstanding scientists knowledgeable about oil spills and their effects but not immediately involved with any of the parties directly responsible for the oil spill and the subsequent followup.

3) **COME TO THE AID OF NATIVE ALASKANS** -- Special efforts need to be made to provide Native Alaskans with adequate medical care and mental health care in relation to this spill, as well as assistance enabling them to recover their subsistence lifestyles and commercial activities, and improved mechanisms for their concerns to be heard and heeded by policymakers.

This oil spill has had a direct effect on Native Alaskans in Prince William Sound villages -- including Chenega, Tatitlek, English Bay and Port Graham. They have experienced physical and mental stress as well as substantial diminishment of their lifestyles. For these reasons as well as others that will help foster increased empowerment of Native Alaskans, we also must ensure that the government and Exxon are open and responsive to their concerns and views. Accordingly, special investigative hearings should be conducted both by the U.S. Senate Select Committee on Indian Affairs and the Department of Interior's Assistant Secretary for Indian Affairs.

4) **PROTECT ALASKAN SPECIES** -- Immediate steps need to be taken by the federal government (especially the U.S. Fish & Wildlife Service and the National Marine Fisheries Service) to review proposed hunting and fishing in Alaska of species whose abundance has been diminished (or might become diminished) as a result of this oil spill.

In the longer term, domestic and international institutions need to be established and financed by the oil industry and the hazardous waste transport industry to:

- provide sufficient and readily available funds for use in spill-specific species recovery operations;
- research and implement species restoration for sea otters and other impacted species; and
- cover the cost of research and other studies on habitat recovery and the long-term effects of accidental and operational oil spills and hazardous waste spills on species.

5) **KICK THE OIL HABIT -- America desperately needs leadership from President Bush and his advisers to promote energy conservation, efficiency of home appliances, corporate automotive fuel economy (CAFE) standards, greater reliance on public transportation, and alternative sources of energy (such as solar, biofuels and geothermal). The federal government must substantially increase support of research, development and commercialization of energy efficiency and renewable energy sources.**

This oil spill has reminded us that America faces a dire future unless it solves its chronic dependence upon oil for its energy needs. Rather than confronting this challenge, during the 1980s we actually have taken giant steps backwards. Further oil spills and aggravated global warming are only two of the increasingly serious environmental problems with which we must contend as long as we continue to burn fossil fuels for energy.

Chronic oil addiction is the wrong answer -- while fuel-efficiency and energy conservation are the right answers for a sustainable future. There would be absolutely no need for any oil development in the Arctic National Wildlife Refuge if the Reagan-Bush Administration had not failed to uphold this year's government requirement that new cars achieve an average fuel efficiency of 27.5 miles-per-gallon. Fuel efficiency also would help stop global warming since the newer, fuel-efficient cars emit less than half of the 60 tons of carbon dioxide each older car emits during its lifetime. One stark statistic on energy conservation: each year as much energy leaks out through the windows of America as flows through the Alaskan pipeline.

6) **JUST SAY "NO" ON THE ARCTIC REFUGE -- The oil-spill debacle in Prince William Sound has proven to all Americans what the environmental movement has been stipulating since the Trans-Alaskan pipeline was first proposed -- that oil development and environmental protection in sensitive frontier areas are mutually exclusive. Congress should recognize that this nation's dependence on oil amounts to an addiction and must say "no" to the oil industry and the Bush Administration which want to jeopardize the now-pristine Arctic National Wildlife Refuge through exploration for even more oil.**

America does not need the oil which might be extracted from the Arctic Refuge -- not when a slight improvement in the fuel efficiency of new cars being manufactured in the U.S. would more than compensate for all the oil which some analysts are projecting the Refuge to yield.

7) **DEEP-SIX ALL NEW OCS OIL-DRILLING IN VULNERABLE AREAS -- The Secretary of the Interior must be ordered to remove highly-sensitive and controversial offshore areas from the Department of Interior's Outer Continental Shelf (OCS) oil and gas leasing program.**

This is especially vital for the Bristol Bay and Chuckchi Sea regions of Alaska; off the shores of California; on Georges Bank off the New England Coast; near the Florida Keys; off the coasts of North Carolina, Oregon and Washington state; and in the coastal and nearshore waters, submarine canyons and the shelf-break zone of the mid-Atlantic.

8) **IMPROVE OIL TANKER SAFETY** -- Improvements are sorely needed in oil tanker design, operating requirements and personnel standards. Such improvements for tankers should include double-bottoms, additional segregated ballast tanks, and/or bow thrusters for enhanced maneuverability; tanker size restrictions linked to effective worst-case-spill cleanup capability; upgraded vessel traffic service (VTS) in Prince William Sound and other U.S. ports; and increased Coast Guard inspection of Alaskan pipeline trade vessels.

9) **SHORE UP THE HUMAN ELEMENT** -- While human error never can be legislated away, a number of improvements to current personnel policies are needed and steps must be taken to improve spill response capability.

Preventive measures involving personnel that need to be strengthened include: adequacy of license requirements; improved retraining and refresher courses; monitoring for alcohol and drug abuse on the job; increased civil fines and criminal punishments; and additional manning requirements. Spill response improvements must include: routine testing of oil-spill and other hazardous-spill contingency sites; maintaining full-time emergency response teams in all ports with heavy traffic of vessels carrying oil or hazardous substances; and adding several new federal strike-team centers at key locations (including Valdez, Alaska) with the cost of these new centers borne by the oil industry.

10) **INCREASE LIABILITY AND COMPENSATION** -- Our nation requires a package of complementary national, state and international laws which will fully compensate victims of oil spills, including damages to natural resources, other property and loss of income. This package also is needed to provide prompt, effective cleanup; to require adequate bonds from terminals, pipeline and tanker operators; and to internalize those costs within the oil industry and its transportation sector.

The Exxon Valdez spill is a grim reminder that existing laws covering both oil spill liability and compensation are archaic, fragmented and inadequate. Those laws contain deficient cleanup and damage remedies, result in subsidies by the taxpayer, and allow spillers to take advantage of legal defenses and technicalities at the expense of victims. The system needs to be revamped by the Congress.

11) **INCREASE THE COAST GUARD BUDGET** -- The Coast Guard's budget for environmental responsibilities has been woefully inadequate throughout the 1980s, remaining at only about 7.5 percent of the entire Coast Guard budget. Given the substantial increase in Coast Guard responsibilities for protection of marine and coastal environments during this same period, funding for that critical component of its mission needs to be increased substantially.

One of the main impacts of the inadequate spending on environmental concerns is that the Coast Guard is understaffed and unable to use state-of-the-art equipment such as sophisticated navigational monitoring and warning systems in ports which handle oil and hazardous chemicals. Shortly before it impaled itself on Bligh Reef in Prince William Sound, the Exxon Valdez apparently disappeared from the Coast Guard's radar screen -- a development which simply would not have occurred in a growing number of non-U.S. ports (including Third World nations) that have up-to-date vessel traffic services (VTS), radar and other technological aids.

12) **CLOSE OIL INDUSTRY LOOPHOLES ON WASTE PRODUCTS** -- The oil industry today enjoys a gigantic regulatory loophole for handling its toxic wastes. This makes its difficult to assess the extent of these wastes and also allows for improper disposal.

Currently, a wide variety of wastes generated in association with oil and gas exploration and production are not subject to federal hazardous waste regulation, regardless of the hazardous nature of the waste. Improper disposal of these wastes has led to environmental damage in numerous areas of Alaska and the contiguous United States. Congress should close this special loophole for the oil industry and direct the EPA to regulate these wastes as hazardous.

13) **STRENGTHEN BROADER ENVIRONMENTAL SAFEGUARDS** -- The catastrophic Exxon Valdez spill has focused attention on the inadequacy of America's commitment to environmental protection in general -- and should be used as a springboard for a comprehensive and expedited review of the adequacy of those policies and programs.

Such a review should conclude with:

- reinstatement of the "worst-case scenario" requirement as part of Environmental Impact Statements under the National Environmental Policy Act with more stringent guidelines for describing a "worst case" (given that the actual Exxon Valdez spill substantially exceeded the perceived worst case;

- Congressional enactment of an Environmental Emergency Act similar to the Natural Disasters Act to help individuals, communities and states faced with environmental disasters;

- amendments to the Comprehensive Environmental Response, Compensation and Liability (Superfund) Act as well as the Superfund Amendments and Reauthorization Act (SARA) of 1986 to ensure that natural resource damage claims are not disallowed due to arbitrarily low caps on payments of such claims.

# # #

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IMPERATIVES FOR ACTION
BY EXXON and the ALYESKA CONSORTIUM

1) **KEEP YOUR WORD -- -- The oil industry must be held accountable to fully honor the letter and spirit of the commitments it made to protect the environment in 1973 when the Congress and the American people were considering whether to allow them to construct the Trans-Alaskan oil pipeline.**

In the summer of 1973 the oil companies within the Alyeska consortium (the three largest are Exxon, Arco and BP America, with Mobil, Phillips Petroleum Company, the Amerada Hess Corporation and Unocal Corporation holding smaller shares) made various promises to secure and maintain the appropriate technology, equipment and personnel to ensure that no oil spill ever would occur -- and if one ever did, to immediately contain and recover the oil without significant damage to the environment. Instead, the oil companies have cut back on safety precautions and cut corners on the best technology to prevent and respond to such spills.

For example, the oil companies pledged in 1973 that each oil tanker would be "equipped with modern navigation systems and that all tanker traffic in the Prince William Sound/Valdez Harbor will be monitored by a traffic control system similar in concept to airport control systems." They also promised that "newly developed oil spill booms and skimming equipment will be readily available to put contingency cleanup plans immediately into effect in the event of an oil spill." Both pledges were, of course, dismally and tragically abrogated.

2) **PAY THE PIPER -- The costs of this oil spill's cleanup and compensation alone are going to be staggering -- and Exxon cannot be let off the hook in the months and years ahead when this calamity has disappeared from the nation's headlines and headaches. Among other conditions, this means that there can be no cap placed on the liability to which Exxon and the other Alyeska members are exposed.**

For better or worse, this catastrophe was caused by the world's fourth largest corporation with vast profits last year alone of well over $5 billion. The fishermen, the tourism and recreation industries, Native Alaskans, the cleanup crews, the general public and Mother Nature herself will have bills to present to Exxon -- and they must be paid promptly and in full, well before the corporation hands out its rounds of executive bonuses next Christmas and thereafter.

Exxon and all the other oil companies which transport oil in and around the United States also must be made to pay for the costs of improving oil tanker safety conditions to levels precluding a repetition of the Prince William Sound debacle -- and to invest in adequate oil-spill contingency programs.

3) **PAY THE U.S. TREASURY** -- As the current law now stands, Exxon is allowed to partially deduct from its 1989 corporate tax payments (as business expenses) any cleanup, compensation and related costs it incurs. That defect in U.S. tax law is more than ironic; it's unjust. The American taxpayers already have taken it on the chin from the Exxon Valdex oil spill; they don't need another roundhouse next year from an obscenely profitable multinational operator.

4) **ESTABLISH A $1 BILLION ANNUAL TRUST FUND** -- This fund, to be replenished by the oil industry by $1 billion each year for the next five years, would be created above and beyond any cleanup and damages costs borne by Exxon in relation to the Alaskan oil spill. The primary function of the fund would be to improve and advance environmental protection and education in Alaska and all other states where the oil industry maintains production and/or transportation facilities.

5) **ROLL BACK THE GAS PRICE HIKES AND OTHER PROFITEERING** -- Early reports following the oil spill indicate wholesale and retail price increases on gasoline of up to 20-cents per gallon (reflecting, supposedly, concerns over shortages after the loss of more than 11 million gallons of crude oil). In a kinder and gentler nation, it would be compounding the outrage to allow the perpetrator of an oil spill to become the profiteer.

The General Accounting Office of the U.S. Congress should assess the extent to which Exxon profits from the effects of the Exxon Valdez oil spill -- and Exxon should significantly lower its prices on gasoline for an appropriate period thereafter so that consumers can receive their refunds at their local gas stations.

6) **HELP YOUR COUNTRY DEVELOP A RATIONAL ENERGY POLICY** -- Exxon is, afterall, the largest energy corporation in the world. It should be induced, either internally or externally by consumers and the Congress, to help develop alternative energy sources for a nation grievously addicted to oil.

The solution to America's energy policy vacuum and oil addiction is not increased use of nuclear energy or more nuclear power plants. The solution lies in the trident approach of:

- energy conservation which can greatly reduce our dependence on domestic oil from Alaska and foreign oil from unreliable trading partners;

- alternative sources of energy, ranging from solar and fuel cells to biofuels and geothermal power (which already supplies all the energy needs of the entire nation of Iceland) -- some of which already enjoy practical applications today;

- fuel-switching to cleaner fossil fuels (away from coal and oil which are serious contributors to global warming) such as natural gas.

# # #

TESTIMONY OF DENNIS KELSO
BEFORE THE HOUSE SUBCOMMITTEE
ON COAST GUARD AND NAVIGATION
May 11, 1989

Mr. Chairman and Members of the Subcommittee:

My name is Dennis Kelso. I am the Commissioner of the Alaska Department of Environmental Conservation. I want to thank you for the opportunity to present the views of the State of Alaska on the urgent need to review and reform federal laws dealing with oil spill response and tanker safety.

The Alaska Department of Environmental Conservation (ADEC) is the State regulatory agency with primary responsibility for environmental protection.

In the weeks since the EXXON VALDEZ spilled 11 million gallons of oil in Alaska's Prince William Sound, Alaskans and much of the nation have experienced the anguish and frustration that results from such a tragedy. After the spill, I was in Prince William Sound virtually every day for 5 weeks. I have witnessed the confusion and delays in responding to the spill. It has been a painful learning experience. I'd like to share with this Subcommittee some of what we have learned, what we can do to prevent these incidents, and how we should deal with them.

The key to protecting ourselves from future oil spills is preventing them. Once the oil is on the beaches, we're already behind and the damage is in the water and done. I believe the EXXON VALDEZ spill could have been prevented and that through reasonable legislation we can prevent others in the future.

Governor Cowper, in testimony before the Senate Subcommittee on Environmental Protection, recommended that the federal government take immediate concrete steps to minimize the chances of another massive spill. Specifically,

* the Coast Guard should make a thorough review of tanker design, construction, and operations so that human errors will not result in loss of a tanker or its cargo;

* Coast Guard licensing requirements should be revised so that licenses are reexamined more frequently and information on drug and alcohol violations is available to prevent giving command of a supertanker to a person who could be incapacitated;

* at the same time we should conduct a thorough review of the use of drugs and alcohol in the maritime industry and

look for new measures to prevent their contributing to another tragedy; and

* a thorough review should be made of Coast Guard radar, navigational aids, navigational systems, and other safeguards throughout the nation, so that shore-based radar is always available when a tanker is maneuvering in dangerous or sensitive waters.

We are pleased to see that H.R. 2158 embodies many of these recommendations. Accordingly, we urge the prompt enactment of legislation which incorporates these and other needed changes in federal law and policy.

We must also reexamine the system for responding to oil spills. The federal and state governments and the industry must prepare -- in advance -- for the next large spill. Again, we recommend:

* that Congress require all tankers to have the ability to contain and clean up oil, e.g., by having equipment and trained personnel on board to deal with large spills the moment they happen;

* that the National Oil Spill Contingency Plan be changed so that:

  * the State and the Coast Guard have strong authorities to direct the response of large spills, without waiting to see if the responsible party -- who will ultimately pay the bill -- does an adequate job; the responsible party should still be required to shoulder the financial responsibility and full liability

  * a world-wide computer inventory of spill equipment and experts is maintained, so that whatever is needed can be put on site without delay;

  * computerized data on geographical, meteorological and oceanographical characteristics of coastal areas is maintained, so equipment and personnel can quickly be sent to wherever they will do the most good.

The State also recommends that we reexamine the entire structure of contingency planning, to make sure that the right equipment and personnel are always available at strategic locations throughout the country, always fully trained, and always ready to respond at a moment's notice.

We have also learned the importance of having emergency funding available at all times. I mean funding for both immediate containment and cleanup work, which is enormously

expensive, and for giving emergency relief to people whose property and livelihoods are damaged by a spill. We cannot depend on the oil industry to fill these needs. The State recommends:

* a comprehensive look at existing federal funds available for containment and cleanup, so that they are funded at the level needed for a major catastrophe, and so that access is quick and efficient;

* the same sort of comprehensive look at the federal programs available for emergency aid to individuals; and

* a comprehensive look at ways to ensure that all claims for damages caused by an oil spill will be paid by the responsible parties.

We realize that we need to reexamine whether existing civil and criminal penalties in federal law are adequate for major oil spills. Existing penalties are not designed for large spills and contain unrealistically low limits. We need to have tough laws that give a real incentive to industry to avoid spills and clean them up -- not merely to treat them as another cost of doing business.

Finally, the State of Alaska urges Congress to set up a new program of intensive research into oil spills: how to prevent them and how to deal with them once they happen. We should not have to use a spill like that in Prince William Sound as an experimental laboratory to find out the best way to contain and clean up oil; we should know how in advance. An aggressive research and development program is essential.

The State of Alaska is not, however, waiting for the federal government to fix everything for us. We already have begun many of these tasks ourselves. Terminal and tanker activities in Valdez are operating under stringent conditions set out in an emergency order. We have requested, and the Legislature has approved a multi-million dollar appropriation for clean-up. We have begun our own thorough review of contingency planning. Every division of State government has been involved in addressing social, fiscal, and resource impacts in the affected communities of Prince William Sound. Already, we have identified in State government the computer capability to compile on one database all the information needed to respond to a spill. Finally, in looking to the future, we have begun identifying areas of needed change in state law. The Legislature already has passed several measures requested by the Governor, such as a strict liability measure for oil spills. Details on some of these activities are included as appendices to our written testimony, and we request that they be included in the record.

But we cannot do it alone. What we are looking for now is cooperation in resolving those issues that go beyond the state level, that have the potential to assist coastal states throughout the nation. We look forward to working with you to identify ways of doing that.

I thank the Subcommittee for the opportunity to provide these recommendations on behalf of the Governor. It is my hope that this spill -- as tragic as it is -- will result in constructive measures to insure that such accidents can never happen again -- in Alaska or anywhere else.

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ERNEST C. BAYNARD, III

MAY 23 1989

May 22, 1989

The Honorable W.J. Tauzin
Chairman
Coast Guard and Navigation Subcommittee
of the Merchant Marine and
Fisheries Committee
United States House of Representatives
H2-547 House Office Building, Annex II
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to testify on behalf of the Trans-Alaska Pipeline Liability Fund (TAPS Fund) before your subcommittee on May 11, 1989. The subject of the hearing, comprehensive oil pollution liability and compensation legislation, is important and the leadership shown by you and your subcommittee is noteworthy.

At the hearing, Secretary of Transportation Samuel K. Skinner proferred an Administration bill. Inasmuch as I testified as to the constitutionality of Section 201 of H.R. 1465, you requested that I submit for the record an analysis of whether the corresponding provision of the Administration bill would be constitutional. On behalf of the TAPS Fund, I am pleased to do that.

The TAPS Fund is a private, non-profit corporation. It was chartered by Congress in 1973 by Section 204(c) of the Trans-Alaska Pipeline Authorization Act. Under the Trans-Alaska Pipeline Authorization Act, the owner and operator of a vessel that spills TAPS oil, that is, oil that has been transported through the Trans-Alaska Pipeline, is strictly liable without regard to fault for the first $14 million of damages that result from such spill. The Fund is strictly liable for that increment of damages in excess of $14 million up to a ceiling of $100 million for any one incident. Strict liability ceases when the oil

is first brought ashore at a port under the jurisdiction of the United States.

In any case where strict liability is imposed and the damages were caused by another person's negligence, the owner and operator of the vessel and the Fund, as the case may be, are subrogated under applicable state and federal laws to the rights of those claimants who have received compensation.

The Trans-Alaska Pipeline Authorization Act provides that the Fund is capitalized by a fee of five cents per barrel paid by the owner of the oil at the time the oil is loaded onto a vessel at the terminus of the Trans-Alaska Pipeline. After the Fund was fully financed at $100 million in September 1981, the fee was discontinued. The assets of the Fund have grown to approximately $250 million through conservative investment of the original sum. If the amount in the Fund were to fall below $100 million, the five cents per barrel fee would be resumed.

The fact that the TAPS Fund was chartered by Congress does not cause its assets to be the property of the United States Government to be disposed of as Congress sees fit. Chartering of corporations is essentially a legislative act, most frequently undertaken pursuant to state legislation. Typically, the legislature will establish general procedures by which corporations may be organized and do business; however, in at least some instances, legislatures have chosen to act specifically and, in effect, grant a corporate charter to a specific corporation.

Congress too may charter corporations, and has done so on numerous occasions. Bridge companies, telegraph companies, railroads and universities, such as George Washington University here in Washington, D.C., are but a few examples of corporations that Congress has chartered.

As the United States Supreme Court has held:

> The fact that Congress granted it a corporate charter does not render the [corporation so chartered] a government agent. All corporations act under charters granted by a government, usually by a State. They do not thereby lose their essentially private character.

San Francisco Arts & Athletics, Inc. v. United States Olympic Committee, 97 L.Ed.2d 427, 453 (1987). Even though it has a congressionally conferred charter the TAPS Fund is nonetheless a private corporation. E. Baynard, Public Land Law and Procedure § 6.8 (1986).

The assets of the TAPS Fund are privately held, not owned by the United States Government and not a part of the Treasury of the United States. It would violate the Fifth Amendment ban against taking private property for public use without just compensation for Congress to attempt "by ipse dixit . . . [to] transform private property into public property." Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 164 (1980) (State of Florida was likewise barred from so transforming interpleader fund). Upon the termination of the TAPS Fund and the satisfaction of those debts and claims for which it is liable, its assets should be distributed in a manner consistent with its private character: to those who contributed the capital to the Fund, i.e., those entities owning TAPS oil at the time it was loaded on a vessel at Valdez.

Section 201 of H.R. 1465 provides that the assets of the TAPS Fund would be disposed of in a manner consistent with the Fifth Amendment: amounts remaining in the Fund after the payment of claims would be refunded pro rata to those owners of oil at the time it was loaded on a vessel at Valdez who paid fees to the Fund. Section 201 of S. 686 would violate the Fifth Amendment's proscription against the Government's taking private property for public use without just compensation: TAPS Fund assets would be seized and placed into the comprehensive fund. Section 201 of the Administration bill (which is attached hereto) provides for the repeal of Section 204(c) of the Trans-Alaska Pipeline Authorization Act, the TAPS Fund charter. The repeal would not be fully effective until all valid claims presented to the TAPS Fund were paid. There is no provision in Section 201 of the Administration bill for repayment of capital to the oil owners who contributed it; however, there is also no provision for the TAPS Fund assets being confiscated. So long as Section 201 of the Administration bill would not attempt, after the payment of valid claims and expenses, to redistribute the TAPS Fund assets to persons other than those who made payments into the TAPS Fund that section would not appear to violate the Fifth Amendment's ban on the Government's taking private property for public use without just compensation; however, to avoid any question concerning the constitutionality of Section 201 of the Administration bill the language contained in Section 201(c) of H. R. 1465 should be included in Section 201 of the Administration bill.

In general, I would respectfully suggest that in considering funding mechanisms for a comprehensive oil spill liability and compensation fund, Congress consider what the United States Supreme Court said in Armstrong v. United States, 364 U.S. 40, 49 (1960):

> The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

Here, there is almost a merger of constitutional and equitable considerations. It was appropriate for Congress to require the owners of TAPS oil to fund a corporation that would, in certain circumstances, pay claimants who were damaged by discharges from vessels carrying that oil. Money contributed to the TAPS Fund for that purpose should not be now used as seed money for a comprehensive fund that would compensate those damaged by a vastly greater range of activities. We would be happy to discuss appropriate funding mechanisms with you.

Sincerely,

Ernest C. Baynard, III

ECB:mla

Enclosure

TITLE II--CONFORMING AMENDMENTS

SEC. 201. TRANS-ALASKA PIPELINE FUND.

(a) Section 204(b) of the Trans-Alaska Pipeline Authorization Act is amended--

(1) in the first sentence, by inserting after "any area" the following: "in the State of Alaska";

(2) in the first sentence, by inserting after "any activities" the following: "related to the Trans-Alaska oil pipeline"; and

(3) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Pollution Liability and Compensation Act of 1989.".

(b) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is repealed. The repeal made by the preceding sentence shall not affect the applicability of that subsection to claims arising before the date of the enactment of this Act. The repeal of paragraphs (4), (6), and (8) of that subsection shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all valid claims presented to such Fund.

(c) Officers and trustees, both present and former, of the Trans-Alaska Pipeline Liability Fund shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

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